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NAVAL WAR COLLEGE  
—  
INTERNATIONAL LAW  
TOPICS AND  
DISCUSSIONS  
—  
1914

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U.S. NAVAL WAR COLLEGE

INTERNATIONAL LAW  
TOPICS AND  
DISCUSSIONS

1914

FOR THE YEAR 1914



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1915



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## PREFACE.

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The discussions of the international law topics of 1914 at the Naval War College were conducted by George Grafton Wilson, LL. D., professor of international law at Harvard University, who also drew up the notes which are published in the present volume.

The topics before the conferences were for the most part suggested by questions raised in connection with the proposed Third Hague Conference. Some of the concrete questions were sent to the War College with requests that consideration be given thereto. As in former years the War College is anxious to receive such questions as seem to officers to demand consideration. The recent changes in the plans of work at the War College have made necessary some modifications in the method of treatment of the subjects in the conferences. It has seemed best, however, that the printed volume should in the main correspond to the earlier volumes.

Attention is called to the appendix, containing proposed manual of laws of maritime warfare voted by the Institute of International Law at its session at Oxford in 1913.

AUSTIN M. KNIGHT,  
*Rear Admiral, United States Navy,*  
*President Naval War College.*

AUGUST 1, 1914.



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# INTERNATIONAL LAW TOPICS, WITH CONCLUSIONS AND NOTES.

## TOPIC I.

### CLASSIFICATION OF PUBLIC VESSELS.

How should public vessels be classified having regard to their relations to and possible usefulness for warlike operations?

### CONCLUSION.

Even though there have been propositions to include other vessels under the classes granted exemptions, considering the present tendencies of international opinion and practice the following general classification seems to be approved for public vessels:

#### *Classification of public vessels.*

1. Vessels of war; all vessels under public control for military or hostile purposes.<sup>1</sup>
2. Hospital ships under X Hague convention for the adaptation to maritime war of the principles of the Geneva convention.
3. Cartel ships.
4. Vessels engaged exclusively in scientific or philanthropic work or in exploration.
5. Other vessels.

#### *Treatment of public vessels.*

1. Vessels of class 1 may, according to the rules of war, be captured or destroyed.
2. Vessels of class 2 are exempt from capture when conforming to X Hague convention.
3. Vessels of class 3 are exempt from capture when conforming strictly to the terms of the cartel agreement.
4. Vessels of class 4 are exempt from capture when their status has been made known by notification and when innocently employed.
5. Other vessels are liable to capture.

<sup>1</sup> Usually a public armed vessel under command of a duly commissioned officer and having a crew under naval discipline.



## NOTES.

*Introduction.*—The changes in methods and means of maritime warfare have been more rapid than the changes in the laws regulating the conduct of maritime war. The rules generally cited were drawn up for the conduct of war at a period when wooden ships were used and when ships were propelled by sails. The elements of time and space then bore a relation to military operations very different from that of to-day. The attempt to extend the old rules to modern conditions has in many cases shown these rules inapplicable.

*Classifications.*—There has also arisen in consequence of changed conditions, a demand for new rules in order that States may not suffer undue hardships. In early times all ships of the enemy were liable to like treatment regardless of the fact as to whether they were public or private. Now there is not merely a difference in the treatment of the public and private ships of the enemy, but also in the treatment of different classes of public ships.

*Vessels used in war.*—In a sense all vessels for hostile use may be called vessels of war, but the term should be more clearly defined. The introduction of steam as a motive power has increased the importance of coal and coaling stations, and colliers have become more important. The same may be said in regard to other forms of fuel and fuel ships.

The change in material of ship construction has made repair ships essential. Docking facilities, dry docks, etc., have assumed a new importance. Ports which might be suitable as bases for fleets of wooden ships of war may be entirely unsuited for modern battleships.

The highly specialized service of some ships of war requires that supplies and other forms of aid be always close at hand and supply ships and other auxiliary ships have been enrolled in the maritime service.

The transportation of the military and naval forces is often by special troop ships.

Vessels serving in the various capacities mentioned above may be regarded as so closely related to the naval

service as to be analogous to vessels of war if not actually within that category.

*Attempts at definition.*—There have been many attempts at definition of vessels of war in order to distinguish a ship which is liable to the extreme consequences of war from a vessel which may receive a somewhat less severe treatment. The need of clear definition has been particularly evident because of the questions arising in regard to conversion or transformation of vessels of other classes into vessels of war. Naturally if there are to be rules for conversion there must be a clear conception of the class into which conversion is to be made. The question of definition arose at The Hague in 1907 together with the question of conversion.

At this time Great Britain proposed that vessels of war should be divided into two categories.

A. Vaisseaux de combat.

B. Vaisseaux auxiliaires.

A. Sera compris dans le terme "vaisseau de combat:" Tout navire battant un pavillon reconnu, armé aux frais de l'Etat pour attaquer l'ennemi et dont les officiers et l'équipage sont dûment autorisés à cet effet par le Gouvernement dont ils dépendent. Il ne sera pas licite au navire de revêtir ce caractère sauf avant son départ d'un port national ni de s'en dévêtir sauf après être rentré dans un port national.

B. Sera compris dans le terme "vaisseau auxiliaire:" Tout navire marchand, soit belligérant soit neutre, qui sera employé au transport de marins, de munitions de guerre, combustibles, vivres, eau ou toute autre espèce de munitions navales, ou qui sera destiné à l'exécution de réparations ou chargé du port de dépêches ou de la transmission d'information si le dit navire est obligé de se conformer aux ordres de marche à lui communiqué, soit directement soit indirectement, par la flotte belligérante. Sera de même compris dans la définition tout navire employé au transport de troupes militaires." (Deuxième Conférence Internationale de la Paix, Tome III, p. 862.)

These definitions received somewhat full treatment and explanation from Lord Reay, who, speaking of the term "vaisseau de guerre," said:

Il me semble qu'il serait opportun d'ajouter quelques mots d'explication en appelant votre attention sur les conditions de la guerre maritime de nos jours qui sont, vous en conviendrez, très différentes de celles qui existaient du temps de Suffren, de Nelson ou de Paul Jones.

Autrefois, Messieurs, le vent était l'élément indispensable sans lequel une flotte était paralysée dans ses mouvements; aujourd'hui

c'est le charbon qui joue le rôle principal et sans lui une escadre moderne ne peut pas naviguer et se trouve dans l'impossibilité d'échapper à la poursuite de l'ennemi. Il est donc indispensable aux vaisseaux de guerre de faire du charbon et d'organiser à ces fins un service de vaisseaux charbonniers qui, le cas échéant, accompagneraient la flotte. On ne saurait contester que ces vaisseaux charbonniers font partie intégrante d'une flotte belligérante et que l'ennemi s'efforcera toujours de s'en emparer, quel que soit leur pavillon. En effet, supposons qu'une escadre belligérante rencontre des vaisseaux chargés de charbon à destination de l'ennemi, croyez-vous qu'elle hésitera à les saisir comme faisant partie de l'escadre ennemie? Pour ma part, je ne le crois pas.

Des vaisseaux neutres faisant ce service de ravitaillement rendent à l'un des belligérants une assistance hostile que l'adversaire ne saurait reconnaître comme licite et s'exposent de ce fait à toutes les conséquences qui découlent de l'état de belligérant. Toute fourniture de combustibles, de vivres ou de munitions faite par un navire neutre accompagnant ou escortant une escadre belligérante, constitue de sa part une infraction à la règle générale qui interdit à un neutre de porter directement secours à un belligérant. Il ne s'agit plus, dans l'espèce, d'une simple entreprise commerciale, mais d'un acte d'ingérence dans les opérations de la guerre.

Les navires qui font ce service de ravitaillement, ou qui sont chargés d'exécuter des réparations ou de porter des dépêches, sont directement soumis aux ordres des autorités compétentes du belligérant. Ils sont incorporés dans ses forces maritimes, qu'ils soient armés ou non, qu'ils naviguent en conserve avec les flottes du belligérant ou qu'ils attendent les ordres de marche ou l'arrivée des navires de guerre, soit en mer, soit dans un port.

Leur caractère belligérant est donc incontestable puisqu'ils prennent une part active aux opérations de guerre.

Les armateurs qui mettraient leurs navires ainsi à la disposition d'un des belligérants les exposent de ce fait à tous les risques et périls encourus par les navires de guerre du belligérant auquel ils prêtent leur assistance hostile. Reconnaître la légitimité de leurs actes aurait pour effet de prolonger la guerre et d'étendre le théâtre des hostilités. Nous croyons, Messieurs, que le résultat de l'adoption de notre proposition serait au contraire d'accorder une protection plus large aux neutres et de limiter les forces belligérantes aux forces nationales qui seules, à notre avis, devraient se trouver en présence les unes des autres.

Il est bien entendu que la règle ne s'appliquerait qu'aux navires se trouvant dans les conditions précitées et qui rendraient les services déjà énumérés. Il ne saurait y avoir aucun doute dans notre esprit sur le caractère hostile des services rendus dans ces conditions.

Selon ces conditions, les navires doivent être placés sous les ordres directs ou indirects d'un Gouvernement belligérant ou d'un commandant d'une escadre belligérante; ils devront de temps en temps être incorporés dans une escadre belligérante ou la rejoindre selon les circonstances; ils devront être employés au transport de marins ou de

soldats, de munitions de guerre, de charbon, de provisions ou d'articles d'approvisionnement maritime, ou chargés d'exécuter des réparations ou de transmettre des dépêches ou des informations à l'escadre dont ils dépendent.

Dans ces conditions ils seront considérés comme prêtant une assistance hostile à l'ennemi. (Deuxième Conférence de la Paix, Tome III, p. 847.)

Admiral Röell, of the Netherlands delegation, raised the question whether it was intended to give to these "vaisseaux auxiliaires" all the rights of vessels of war. He referred to the right of capture of enemy and of neutral ships, the right of visit and search, and sojourn in neutral ports.

The American delegate, Gen. Porter, suggested that apparently the purpose was to give the belligerents the same summary jurisdiction over them that they would exercise over regularly commissioned ships of war—i. e., they might be seized or destroyed without reference to a prize court before or after the act. He also held that a vessel engaged in unneutral service would under the existing principles of international law be brought before a court for adjudication, but under the classification and definition proposed by Great Britain would be subject to treatment such as the will of an enemy commander might dictate.

The Russian delegate thought that the term "vaisseaux auxiliaires" included all private ships, even though neutral, which were employed in the transportation of fuel, provisions, water, etc., for the belligerent fleet.

The question of definition of the term "vaisseau de guerre" was, after discussion, referred to a committee, of which Admiral C. S. Sperry, United States Navy, was a member, for special consideration and more precise definition. This committee reported through M. Fromageot:

La proposition britannique, telle qu'elle a été présentée, comprend dans son préambule, comme vous l'avez vu, sous une même expression "vaisseaux de guerre" deux catégories: les vaisseaux de combat et les vaisseaux auxiliaires.

S. Exc. Lord Reay a, tout d'abord, déclaré retirer ce préambule.

Il en résulte qu'il ne s'agit plus actuellement de présenter, comme une catégorie de navires de guerre, les navires visés par la proposition britannique sous le nom de navires auxiliaires.

La proposition se trouve donc actuellement à comprendre deux dispositions nettement distinctes:

1°. Une disposition relative à la définition du navire de combat, c'est-à-dire aux caractères que doit présenter le navire de guerre pour jouir de cette qualité au point de vue du droit des gens.

À cet égard, et en réponse à une observation du Comte Tornielli, l'honorable Délégué britannique a très nettement déclaré que rien n'était plus loin de la pensée de son Gouvernement que de proposer un texte pouvant songer à un rétablissement déguisé de l'ancien droit de course.

Aussi bien, ce premier paragraphe n'avait pas à être examiné par le Comité. La discussion en paraît naturellement devoir être rattachée à la discussion des propositions présentées sur le même sujet, par les autres Délégations.

2°. Une disposition apportant une définition de ce que la Délégation britannique propose d'appeler "vaisseaux auxiliaires."

Sur ce point, S. Exc. Lord Reay a expliqué le point de vue de sa Délégation, qui est d'assimiler aux navires militaires d'une force navale, quant au traitement auquel ils sont exposés, les navires de commerce, soit employés au service de cette flotte pour un usage quelconque, soit placés sous ses ordres, soit servant à des transports de troupes, dans tous les cas, prêtant ainsi à la flotte une assistance évidemment hostile.

Pour préciser la portée de la proposition, les membres du Comité ont tour à tour expliqué les conséquences qu'elle leur paraissait entraîner.

Le caractère hostile reconnu aux navires transporteurs de munitions, combustibles, vivres, etc., a-t-on fait remarquer, ne serait autre chose que la consécration de la notion de contrebande—ce qui paraît en contradiction avec la proposition, faite d'autre part par la Grande-Bretagne, d'abolir cette notion. La contrebande destinée à une force navale se trouverait ainsi rester saisissable—et, comme on va le voir, dans des conditions plus rigoureuses qu'autrefois—tandis que le même transport, destiné à un port de l'ennemi, serait licite.

D'autre part, dans l'état actuel du droit, le navire de commerce accompagnant une flotte est simplement exposé au traitement de droit commun, c'est-à-dire, la capture et la nécessité d'une décision de validation par une cour de prise.

L'assujettissement du même navire au traitement des navires militaires de cette flotte autoriserait non-seulement la capture sans aucune formalité judiciaire de prise, mais encore l'emploi de tous moyens de destruction en usage entre forces militaires.

De cet échange d'observations et des explications fournies par S. Exc. Lord Reay, il résulte que le sens et la portée de la proposition britannique peuvent se caractériser comme il suit:

Il ne s'agit pas ici à proprement parler ni de contrebande, ni de navires de commerce transformés en navires de guerre, c'est-à-dire mobilisés. Ce n'est pas le commerce avec le belligérant qui est visé, c'est le fait pour un navire d'être au service de ce belligérant, à quelque titre d'ailleurs que ce soit, comme navire-magasin, comme navire-

atelier, comme réserve de vivres, de combustibles ou de munitions; peut-être même le navire sera sur lest, accompagnant la flotte en vue de telle ou telle éventualité.

Ces navires, au cours de leur service au profit du belligérant, seraient, d'après la proposition britannique, soumis au traitement éventuel des navires militaires de ce belligérant, avec toutes les conséquences de fait et de droit qui en résultent.

Une fois leur service terminé, ils se retrouveraient sous l'empire du droit commun.

L'expression de "navire auxiliaire" souvent employée pour désigner des navires mobilisables ou mobilisés, et destinés à exercer les droits de belligérants, pourrait prêter ici à confusion. Cette confusion, comme on le voit, doit être évitée.

Convient-il, ainsi que l'a fait remarquer notre Président, M. de Martens, de reconnaître cette nouvelle classe de navires, se plaçant en quelque sorte entre le navire militaire belligérant et le navire privé?

Y a-t-il lieu de leur imposer le traitement proposé?

Faut-il distinguer entre le cas du navire voyageant de conserve avec la flotte,—le cas du navire voyageant isolément aux ordres de ladite flotte,—le cas du navire transporteur de troupes?

Le Comité d'examen n'avait pas à se prononcer à cet égard. Il s'est efforcé, comme il en était chargé, de préciser la question; il vous appartiendra de la résoudre. (Ibid., p. 863.)

Further discussion led to the withdrawal of the British definition of "vaisseau auxiliaire," and the question so far as relates to unneutral service was considered at the International Naval Conference, 1908-9, and the conclusions embodied in the Declaration of London, 1909.

*Neutrality proclamations.*—The proclamations of neutrality have shown that neutrals intended to include other ships than those which might be called men-of-war in the regulations provided such ships were under belligerent control. These provisions vary somewhat according to the conditions, but, in general, cover vessels controlled by belligerents for hostile purposes.

In 1898, at the time of the Spanish-American War, the Brazilian regulations, which were reaffirmed for the Russo-Japanese War in 1904, stated:

VIII. No ship with the flag of one of the belligerents, employed in the war, or destined for the same, may be provisioned, equipped, or armed in the ports of the Republic, the furnishing of victuals and naval stores which it may absolutely need and the things indispensable to the continuation of its voyage not being included in this prohibition. (Proclamations and Decrees, p. 14.)

Denmark, in 1898, provided that—

Vessels of war of either belligerent or transport boats belonging to their fleets will be permitted to enter the ports and territorial waters of the islands, but to remain there only during twenty-four hours, except in case they find themselves in distress caused either by bad weather, lack of provisions, accident, or other cause. (*Ibid.*, p. 23.)

The Italian royal decree, of June 16, 1905, embodied the same prohibitions in article 12 for "Foreign ships of war and merchantmen armed for cruising."

In 1898, also an imperial ordinance of Japan, No. LXXXVII, extended the same rules to "men-of-war and such other ships used for warlike purposes" as may "happen to be in the territorial waters of the Empire."

*Regulations as to visits.*—Several States have issued regulations in regard to the entrance of vessels into their ports. Not all of the regulations give any definition as to the scope of the regulations. Among the statements made may be mentioned that of France, which uses the word which has been translated as "man-of-war." Article I, of the French Regulations of May 21, 1913, is as follows:

The term "man-of-war" shall be considered as applying not only to all the ships designated as such in the recognized sense of this word, but likewise to auxiliary ships of all sorts. (*Visits of men-of-war to foreign ports*, p. 14.)

The German Regulations of August 18, 1911, in the first article use the term "warships and other vessels of war of foreign powers." In Article VII "ships and vessels of foreign navies" are mentioned. In the German Regulations of May 14, 1913, Article I, the phraseology is "war vessels (war ships and war craft) of foreign powers."

The regulations relating to the Dutch protectorates refer to vessels of war as in the regulations relating to Curacao of April 2, 1912, which say:

ARTICLE I. This resolution includes among men-of-war and vessels equalized therewith all vessels—

First. Which carry the outward marks of men-of-war of their nationality (flag and command flag or split command pennant);

Second. Whose commander is in the service of the State and is charged with the command by the competent authority; and

Third. Whose crew is subjected to military laws.

The regulations of the Dutch East Indies of October 16, 1905, state:

ARTICLE I. In these regulations the term "foreign warships" is to be understood to mean—

- I. All warships of nations on friendly terms with the Netherlands.
- II. All ships having on board armed troops of nations on friendly terms with the Netherlands.

Great Britain, in December, 1912, announced, for the purpose of regulations for the United Kingdom, that—

The term "ship of war" is to be understood as including all ships designated as such in the accepted sense of the term, and also auxiliary vessels of all descriptions.

There seems to be a growing tendency to use a brief general term to cover all vessels under public control for purposes of war. This becomes particularly necessary when regulations are to be made in accordance with the Hague conventions for regulating the number of ships which may be in a neutral port. Such a general definition is also convenient in order to avoid misunderstandings in the time of peace. As privateering is, in general, discountenanced, vessels under public control are now regarded as the only legitimate vessels for hostile use.

*Résumé.*—While the term "fighting ship" or "battleship" may perhaps be reserved for such vessels as are actually equipped for engaging in battle, there is reason for a general term which will cover the range of vessels used for hostile purposes in time of war. It may be difficult to predict whether the issue of a naval campaign will depend more upon the battleship or upon supply ship and collier. Each may be essential. Each is designed for use in war, and several ships may be necessary to constitute a fighting unit. It is not easy to maintain such distinctions under modern conditions as were possible earlier, when each ship might be a self-sufficient fighting unit. The fact that one ship has the guns, another supplies, and another coal, does not necessarily determine the respective usefulness of each for war purposes. Transport ships designed to carry troops from one region to another are likewise for purposes of war. Many other auxiliary vessels are now necessary, such as dispatch boats, repair ships, etc.



There are, however, certain vessels with a fleet which are not there for war purposes, such as hospital ships. It is the mission of these to mitigate the evils of war. They care for the shipwrecked and wounded of both parties, and their purpose is not hostile.

The object of the service of the battleship, the supply ship, the collier, the dispatch boat, etc., is hostile. The object of the service of the hospital ship is not hostile. The first may be broadly classed as vessels of war, and as such are distinct from hospital ships. Therefore the term "vessels of war" applies to all vessels under public control for hostile purposes.

*Consideration in 1899.*—At the First Hague Peace Conference in 1899, the subject of classification of vessels devoted to the care of the sick, wounded, and shipwrecked received consideration. The president of the committee having the matter in charge, speaking of vessels in general which might render hospital service, mentioned—

1. bâtiments-hôpitaux militaires;
2. bâtiments de commerce;
3. bâtiments hospitaliers, équipés aux frais de sociétés de secours;
4. embarcations. (Conférence Internationale de la Paix, Troisième Partie, p. 62.)

Of this proposition Capt. Siegel, of the German delegation, said:

M. Siegel dit qu'en soumettant les embarcations à cette décision, on a eu en vue de faciliter au commandement supérieur le contrôle des navires admis sur le champ de bataille.

Cependant cette question soulève des difficultés.

Les navires dont il s'agit peuvent être de deux sortes:

- 1°. les bâtiments hospitaliers équipés aux frais de sociétés de secours, reconnus et commissionnés par leurs Gouvernements;
- 2°. les bâtiments de commerce, de plaisance, de pêche, etc., qui se trouvent fortuitement sur le champ de bataille.

M. Siegel est d'avis que les premiers peuvent être assimilés aux navires de l'Etat et que les forcer à arborer un pavillon étranger serait un acte incompatible avec la souveraineté de l'Etat de qui ils relèvent, un acte qui pourrait être considéré comme peu amical pour la Puissance non favorisée et qui constituerait peut-être même une violation de la stricte neutralité au bénéfice de l'un des belligérants.

Si l'on accorde aux bâtiments de commerce la liberté de porter, s'ils le jugent à propos, un pavillon étranger avec le pavillon de leur pays, il

reste toujours le fait d'un acte peu amical qui augmenterait probablement les risques de l'entreprise.

M. Siegel ajoute qu'il lui paraîtrait utile, dans ces conditions, de laisser aux bâtiments hospitaliers le droit de porter, avec le pavillon blanc à croix rouge, exclusivement leur pavillon national en y ajoutant, si cela était jugé nécessaire, une marque distinctive qui serait à déterminer. (Ibid., p. 63.)

Not merely did the conference of 1899 consider that hospital ships should be easily recognizable, but that their character should be made known in advance, as was shown in the report of the committee:

La Commission propose donc de soustraire à la prise les bâtiments construits ou aménagés par les Etats spécialement et uniquement en vue de porter secours aux blessés, malades et naufragés. Chaque Etat construira ou aménagera comme il l'entendra les bâtiments affectés à son service hospitalier; on ne saurait lui imposer aucun type déterminé. L'idée essentielle est que les bâtiments auront un caractère exclusivement hospitalier, par suite ne pourront rien porter qui ne soit pas destiné aux blessés ou malades et à ceux qui les soignent, qui puisse être utilisé pour des actes hostiles.

Chaque belligérant doit connaître les bâtiments de son adversaire auxquels des immunités particulières sont accordées; il sera donc nécessaire que les noms de ces bâtiments aient été officiellement communiqués. À quel moment cette communication devra-t-elle avoir été faite? Au moment même de l'ouverture des hostilités, les belligérants doivent naturellement se notifier les noms de leurs bâtiments-hôpitaux. Mais il serait excessif de n'accepter que les notifications faites à ce moment. Un belligérant peut avoir été surpris par la guerre, il n'avait pas d'avance construit ou aménagé des bâtiments-hôpitaux; ou bien la guerre prend de grandes proportions et les bâtiments-hôpitaux existants sont jugés insuffisants. Ne serait-il pas cruel d'interdire aux belligérants la faculté de développer leur service hospitalier suivant les nécessités de la guerre, par conséquent d'aménager de nouveaux bâtiments? C'est ce qui a été admis. Une notification pourra donc être faite au cours même des hostilités; elle devra seulement précéder l'emploi du navire pour son nouveau service.

La notification des noms des bâtiments-hôpitaux militaires intéresse tout d'abord les belligérants; elle peut intéresser aussi les neutres, puisque, ainsi qu'il va être expliqué, une condition particulière est faite à ces bâtiments dans les ports neutres. Il est donc à désirer que les belligérants portent les noms de ces bâtiments à la connaissance des états neutres, quand ce ne serait que par une insertion dans leur journal ou recueil officiel. (Ibid., p. 14.)

The Second Hague Conference, 1907, did not make any change in the classification adopted at the first conference, though it did define somewhat more strictly the conditions under which exemptions would be granted.

*Classification, hospital ships.*—Hospital ships form a distinct class owing to the functions which they have to perform. As hospital ships to whatever nationality belonging are performing a public service, they become for the time entitled to special exemptions and are under special regulations.

As was determined by the Hague Convention of 1899, these ships may be of three classes—(1) military hospital ships belonging to the belligerent States, (2) hospital ships equipped wholly or in part by private individuals by societies of the belligerent State, (3) hospital ships equipped wholly or in part by private individuals or by societies of a neutral State. The societies above mentioned must be officially recognized relief societies.

As these hospital ships are under the control and subject to the orders of the belligerent commander, they may be classed as public vessels.

The method of control and degree of responsibility to the commander of the naval forces may be determined by the domestic law of a State, but as regards the conduct of hospital ships such as enumerated above the responsibility to the opposing belligerent is of the nature of a public responsibility.

Hospital ships seem from the above and from other reasons properly within the category of public ships, but not within the category of vessels of war.

*Cartel ships.*—It may be necessary that even in time of war some relations may be had between belligerents. It may be for the advantage of both belligerents that these relations be maintained. During the hostilities it may be necessary that certain communications between the belligerents be continued or that prisoners be exchanged, particularly since in modern times the conduct and treatment of prisoners have been so carefully regulated. Certain vessels are usually set apart to carry on this exchange. If the exchange is for the advantage of both parties these vessels should be given full freedom to carry on their work. At the same time, as there would be exceptional opportunities for dishonorable persons to take advantage of their position to the injury of one or the other of the belligerents, the full freedom for the

performance of the specific work would be closely limited to the specific work.

The class of vessels commonly called cartel ships and authorized to pass between the belligerents under strict regulations will probably continue to be recognized as special class.

*Vessels engaged in scientific work.*—It has been customary for many years to grant special privileges to vessels engaging in scientific work which from its nature would benefit mankind. Notice of the departure of such expeditions has often been transmitted to foreign States in order that the vessels might not be interrupted. So long as the vessels are strictly employed in their scientific work, the immunity has been readily conceded. Sometimes a voyage is undertaken into a remote region better to observe an eclipse. The results of such observations may be of great general value and any interference with the work may be an injury to the State which interferes and bring no military advantage. The same may be said of expeditions to map the sea currents and other like undertakings.

There may be scientific work which from its nature closely resembles work which may be undertaken for military purposes. The taking of certain soundings or making of certain surveys in time of war may be doubtful in character and must be clearly shown to have no relation to the war in order that it may not be stopped or even be penalized. A vessel equipped for scientific work may be specially suited to serve hostile purposes, and for that reason must, if given exemption, be particularly careful to avoid suspicion.

Not merely should such vessels be careful to avoid suspicion, but at the present time it seems a reasonable requirement that the status of such vessels be made known in advance and that they be properly designated in order that they may not be put to inconvenience and in order that the belligerents may identify such vessels at sight and without difficulty.

*Philanthropic and religious work.*—There are now many vessels engaged in various forms of philanthropic and religious work. Usually these vessels, like hospital ships,

assist those in need regardless of nationality or attitude toward the war. Vessels engaged in philanthropic and religious work would ordinarily be equipped with radio-telegraphic apparatus and their personnel would be especially familiar with the region in which they might be found. The personnel of such vessels would ordinarily not be under responsible State control. The possibility that information of a military character might be given to a belligerent by such a vessel would always be present. Indeed some of the personnel might regard such action as a patriotic duty. At the same time, such service as these vessels would habitually render might be even more needed in time of war than in time of peace. It would, for example, be as needful that such service as Dr. Grenfell has rendered to the Newfoundland fishermen should continue in war as in peace, because the fishermen are by international law and by convention exempt from capture and entitled to carry on their ordinary pursuits in an innocent fashion. The general principle followed in these cases seems to be that persons and property having no relation to the war should, so far as possible, be exempt from the consequences of war. While private rather than public vessels usually engage in such philanthropic and religious service, it seems reasonable that such vessels should be properly designated and that their status should be duly established.

*Vessels engaged in exploration.*—As the extent of unexplored earth surface decreases, the importance of such vessels naturally becomes less. Such vessels are, however, sometimes met. The service which they render is in a general way of value to all mankind. It is a service which, if innocently carried on, does not imply any participation in the war. Public ships are sometimes engaged in this service and officers of the Navy are frequently found best qualified to direct such work. Such vessels, if belonging to the State, should be notified to the foreign States and designated in a manner which will make them easily distinguishable.

*Vessels in scientific, philanthropic, exploration service.*—It is evident that vessels exclusively engaged in scientific and philanthropic work or in exploration would, in

general, be entirely unrelated to the war. Their work, while not necessarily like that of the hospital ships, would in a broad way be for the good of all and would not have any belligerent character. These vessels may, therefore, form a distinct class because of their aloofness from the war.

*Lighthouses, general.*—In time of peace lighthouses are maintained for the benefit of shipping in general without distinction as to nationality. In some instances, particularly in earlier times, the shipping coming within the jurisdiction of a State might be taxed for the upkeep of the lighthouses, and the payment of light dues was not unusual. This practice has now for the most part been discontinued, though these dues may be covered in the tonnage dues.

*Opinion of Ferguson.*—Ferguson, who had been the Netherlands minister to China, writing in 1883, said of lighthouses, etc.:

Lighthouses, pilot boats, telegraph vessels, and all vessels belonging to institutions which are established exclusively for the convenience, security, and public safety of navigation, and for the general benefit of all nationalities, are entitled to international protection also during war, as long as interference with them is not absolutely necessary in connection with stringent measures of war.

Regarding mail boats (*paquebot poste*, *post-damper*) we have noted above, in paragraphs 109 and 122, that the privileges which they enjoy result from international postal conventions or special treaties.

Lighthouse tenders are exempt from capture. If the belligerent has not actually occupied the lighthouse, the regular supply by the lighthouse tender must be allowed to go on in the usual way for the benefit of navigation at large. When the belligerent cuts off the supply of a lighthouse situated on a blockaded coast or on outside islands or shoals, by capturing the means of communication, he is bound to continue the maintenance of the light and its supply by his own means by reason of the general international utility attached to the objects thus occupied or captured by him. (*Manual of Int. Law*, Vol. II, sec. 213.)

*Policy in Far East.*—The opinion of Ferguson favoring exemption of lighthouse tenders is in accord with the opinion natural in the Far East, because the lighthouse service was in a degree under international control and particularly protected by treaties and conventional agreements.

The Japanese prize law of 1894 extended exemption from capture not merely to hospital ships, but also to boats belonging to lighthouses.

The regulations governing captures at sea, issued in 1904 by Japan, also exempted "lighthouse vessels and tenders." (Art. XXXV.)

*China.*—Many States have treaties with China giving to their consular representatives a certain participation in the locating of lighthouses, etc., which puts the service in China on a basis somewhat different from that in other States. The treaty of 1858 with the United States is similar to others. Article XVI of this treaty provides that "the collectors of customs at the open ports shall consult with the consuls about the erection of beacons or lighthouses and where buoys and lightships should be placed."

Article XXVI implies that it will be necessary for China to maintain a lighthouse service even during war in order that the vessels of the United States may "pursue their commerce in freedom and security:"

ARTICLE XXVI.—Relations of peace and amity between the United States and China being established by this treaty, and the vessels of the United States being admitted to trade freely to and from the ports of China open to foreign commerce, it is further agreed that, in case at any time hereafter China should be at war with any foreign nation whatever, and should for that cause exclude such nation from entering her ports, still the vessels of the United States shall not the less continue to pursue their commerce in freedom and security, and to transport goods to and from the ports of the belligerent powers, full respect being paid to the neutrality of the flag of the United States, provided that the said flag shall not protect vessels engaged in the transportation of officers or soldiers in the enemy's service, nor shall said flag be fraudulently used to enable the enemy's ships, with their cargoes, to enter the ports of China; but all such vessels so offending shall be subject to forfeiture and confiscation to the Chinese Government.

*Cuban lights, 1898.*—In the Spanish-American War in 1898 the lights were not regarded as inviolable, and lightships were liable to the consequences of war.

U. S. S. *EAGLE*,

*At Sea, May 12, 1898.*

SIR: I have the honor to report that the *Eagle* reached the lightship off Diego Perez Island at 7 a. m. of the 11th instant, and at once commenced a search for the submarine cable connecting Batabano with

Cienfuegos. A boat was sent to the lightship and the keeper's services secured to aid in the search.

Six lines were carefully run at varying depths between the lightship and the point of the shoal to the eastward, now marked by a wreck, the bottom being visible most of the time. This vessel and two of her boats performed this duty, but without a satisfactory result. The strong wind and rough sea, the pilot's assurance that no holding ground could be found for an anchorage, the evident fact that the chart was extremely unreliable, and the positive statement of the lightship keeper that no one had overhauled the cable in that vicinity for over three years determined me to abandon the search at 4 p. m. as fruitless, it being more than probable that the cable was buried deep in the sand of the reefs.

In accordance with your order, the lightship was then set fire and was burning fiercely when this vessel left. Her keeper expressing a desire to go to Cienfuegos, took him on board this vessel with his personal effects and his own small boat, and will drop him off Cienfuegos when you so direct.

This action on my part was principally due to the fact that the sea was too rough for him to get ashore unaided. He states that he is a Cuban and has not received his salary from the Government for the last seven months.

We reached Piedras Cay at sunset. Sent an armed crew on shore and destroyed the lighting apparatus and what pertained thereto. Two men were in charge of the light and with them a small boy. These we found in a starving condition, in consequence of which it became necessary to bring them on board for removal from the island. They had been eight months without pay, three weeks without any communication with the outside, and five days without food.

Very respectfully,

W. H. H. SOUTHERLAND,

*Lieutenant, United States Navy, Commanding.*

Commander B. H. MCCALLA,

*United States Navy, Commanding Division.*

[Naval Operations of War with Spain, 1898, pp. 198-199.]

*Lighthouse, Cape San Juan.*—Early in August, 1898, the *Puritan* and *Amphitrite* took the lighthouse at Cape San Juan. An attempt to recover the lighthouse was later made by the Spaniards, as is shown in the following report:

U. S. S. CINCINNATI, SECOND RATE,

*St. Thomas, Danish West Indies, September 2, 1898.*

SIR: As part of the record of this ship for the month of August I have the honor to submit the following report of the attack by the Spanish forces on the lighthouses at Cape San Juan on August 8:

On August 7 I was ordered by Capt. Frederick Rodgers, commanding U. S. S. *Puritan*, to proceed to maintain the blockade of the port of



San Juan, P. R., which had been left open by the withdrawal of the U. S. S. *New Orleans*.

I proceeded immediately and, as directed, stopped at Cape San Juan to take coal from the U. S. S. *Hannibal*. There I found the U. S. S. *Amphitrite* and *Leyden*, and Capt. Barclay had a party of seamen on shore holding the lighthouse. Under the protection of the party were about 70 Porto Rican refugees, most of whom were women and children. The town of Fajardo had been occupied by our naval forces, but upon their withdrawal it was raided by some Spanish troops, and it was feared they would make an attack on the lighthouse.

Just before dark of the 8th of August reports came in that a large force, said to be several hundred strong, was advancing to retake the lighthouse, and, notwithstanding the urgent necessity of reestablishing the blockade, I deemed that the circumstances warranted my remaining to assist in the defense of the place, especially as a night attack was threatened and the *Cincinnati* was the only ship present with searchlights in working order.

At about midnight firing was begun on shore and the three ships, under the glare of the *Cincinnati's* searchlights, immediately began to shell the woods and slope of the hill on which the lighthouse stands. This, together with the fire on shore, soon drove back the attacking party.

\* \* \* \* \*

Very respectfully,

C. M. CHESTER,  
Captain, United States Navy, Commanding  
and Senior Officer Present.

The SECRETARY OF THE NAVY,  
Navy Department.

[Appendix to Report of Bureau of Navigation, 1898, p. 651.]

There was an evident intent to prepare the lighthouse for defense in time of war:

U. S. S. AMPHITRITE, SECOND RATE,  
Off Cape San Juan, P. R., August 10, 1898.

\* \* \* \* \*

*Military defense.*—The lighthouse is a brick structure 100 by 40 feet, inside measurement, with walls 2 feet thick, evidently built for military defense. There is little woodwork about except the doors and windows. These are furnished with heavy shutters, instead of frames for glass, and have ordinary slat blinds outside of them. The shutters when closed are secured with iron diagonal braces. The floor is marble tile, the roof beams and girders iron, and the roof floor brick. There is only one lofty story and no cellar. The front is commanded by a slightly raised central portico, with loopholes in the parapet. Opposite the portico the lighthouse tower abuts against the rear wall, and a circular gallery just under the light is loopholed. The light tower is about twice as high from the ground as the roof, and can only be entered

from the ground floor or the roof. Two-foot brick parapet walls, about 2½ feet high, subdivide the roof. The window sills are 5 or 6 feet above the ground.

The light is 265 feet above the sea on the summit of a steep hill, which commands the four lower hills and the distant land approaches across a low neck half a mile south. The four lower hills are near to the northward and westward, and the five make up a small promontory on which it is difficult to land boats on account of the shallow water over coral reefs. The land drops away from the lighthouse immediately and on all sides. Fifty feet from the building is a barbed-wire fence. Around this and from 50 to 200 yards from it is another barbed-wire fence and a low hedge. Beyond all is rugged hillside, covered densely with high brush and creepers and traversed by rough paths, except west, where there is a pasture commanded by the lighthouse. The lighthouse inclosures are cleared except of a few low bushes and cactus hedges.

\*                      \*                      \*                      \*                      \*

I am, very respectfully,

CHARLES N. ATWATER,  
*Lieutenant, United States Navy.*

Capt. CHARLES J. BARCLAY,  
*Commanding U. S. S. Amphitrite.*

[Appendix to Report of Bureau of Navigation, 1898, p. 653.]

*Maintenance of lights.*—If lighthouse tenders and other boats in the service of lighthouses are to be exempt from capture in time of war, the service should be maintained in an impartial manner and with the intent of giving the same security to navigators as in the time of peace. The extinction of a light or the change of color or character of a light may lead to disaster for vessels depending upon its constancy. The changing of a light may be an easy ruse for confusing the enemy though it would doubtless affect the private shipping rather than the public vessels of war. Neutral vessels both public and private might be misled.

The legitimacy of the extinction of lights in lighthouses in time of war seems to have been recognized for many years, and court decisions, particularly in regard to maritime insurance, have been rendered accordingly. (*Ionides v. Universal Marine Ins. Co.*, 14 Common Bench Reports, N. S., p. 259.)

*Lighthouse vessels.*—Lighthouse vessels of different kinds have sometimes been placed in a distinct class in the time of war. This seems to have been because of

exceptional circumstances in the Far East. Lighthouses have sometimes been captured and destroyed in war, and lighthouse tenders have sometimes been used for hostile purposes. Lighthouse vessels might under certain circumstances be used for transmitting messages or other hostile service. They are closely related to the lighthouse service, which is established and maintained to aid navigation. It is doubtful whether a belligerent would desire to guarantee to maintain aids to navigation which would perhaps particularly serve his opponent because his own ships would presumably be less dependent upon these aids, owing to greater familiarity with the waters. The establishing of a special class of vessels entitled to special treatment, because in the lighthouse service, seems to depend upon the establishment of a conventional agreement upon the treatment of lighthouses in the time of war. As exemption is at present exceptional, and as it does not seem possible to make a special agreement as to vessels in the lighthouse service, ~~it~~ does not seem expedient to make of such vessels a special class.

*Jurisdiction for revenue purposes.*—There have been wide claims of jurisdiction set up to enforce revenue laws and to prevent smuggling. Twelve miles has been a common limit set up by Great Britain and by the United States. (U. S. Rev. Stat., sec. 2760.) The claims of other States have usually been less extreme.

*Revenue service of the United States.*—The revenue-cutter service of the United States was organized early. In 1790, under the direction of the Treasury Department, this service formed the main naval force, and after the Navy Department was established the Revenue-Cutter Service remained under the Treasury Department, though cooperating with the Navy. The officers are commissioned by the President, and by law hold rank with officers of the Army and Navy, the captain commandant ranking with the colonel in the Army and with the captain in the Navy.

Revenue cutters were frequently ordered to undertake captures or given commissions. Sir William Scott, in

1809, speaking of private vessels and ships of war, and then mentioning revenue vessels, said:

But these vessels, employed in the service of the revenue, are a class of ships of an anomalous kind, partaking in some degree of both characters—they belong to the Government and are maintained at the public expense—but it is not for the purpose of making captures from the enemy. On the other hand, they have commissions of war, but these are private commissions, which impose no peculiar duties upon them; they are not bound to attack and pursue the enemy more than other private ships of war. (*The Bellona*, Edwards, Admiralty Reports, 63).

*Revenue and naval service.*—The revenue service is generally closely related to the naval service of a State. The object of the service is to prevent the unlawful entrance to a State of goods or persons. The laws relating to the payment of duties may be thus enforced and the revenues of the State may be thus increased. The vessels engaged in this service are usually of such construction as to be easily available for use in war.

The personnel of revenue vessels is sometimes directly enrolled in the navy of a State and usually available at short notice for this service.

To grant exemption to vessels engaged in the revenue service would seem to be a grant of exemption to a class of vessels already in the service of a State for the purpose of assuring the income from its trade. While granting this exemption an enemy might be using its forces to put an end to the trade itself. Such an exemption would seem, from the nature of conditions, illogical. The vessels of the revenue service at the present time, with trained observers and with skilled operators of radiotelegraph, might be of greatest aid in the military plans and in furnishing information. The relations of the revenue service seem in the highest degree such as to make it undesirable that it should receive any exemption in time of war. The vessels belonging to this service would not be a class entitled to special consideration.

*Treatment of vessels, vessels of war.*—As war is a relation of hostility of State to State, it is a relation which brings the units of the State into hostility one to another. This relation of hostility of the units varies in character according to the relation of the units to the war itself. It

is now admitted that a coast fishing vessel innocently employed would have no relation to the war and accordingly should be generally exempt from capture. It is similarly admitted that a ship of war of an enemy is so closely identified with the war that it is subject to the most extreme treatment necessary for the end of the war, the aim of which is the restoration of peace with the least possible loss of life and property. This aim is much more humane than many of those sought in early wars, such as the complete reduction of the enemy. The modern aim of war, looking to peace with the least possible loss of life and property, avoids conduct which does not conduce to that end. Unnecessary or wanton destruction of life or property therefore would be regarded as in excess of the rights of legitimate warfare. Indeed it is regarded as an obligation to preserve so far as possible enemy lives and property which may have no relation to or effect upon the end of the war. Unnecessary destruction of life or property may make the return to peace more difficult and hence be contrary to the end sought.

Such considerations as the above have led to the limiting of the extreme measures of war to the persons and instruments particularly devoted to the war and to an attempt to treat other persons and things according to their relations to the hostilities. This may be illustrated by the treatment of mails and mail vessels which were formerly liable to capture, but with the change in the methods of transmission of news have become exempt in general practice and latter by convention.

The principle that persons and things are liable to the consequences of war in accordance with their relations to the war seems to be generally accepted.

Applying this principle to ships of war particularly designed to carry on hostilities against an enemy it would seem proper that the enemy, regarding always the laws of war, should be at liberty to take such measures as would reduce his opponent to submission, otherwise the very end for which the war is undertaken is defeated and the period of the war would naturally be lengthened.

It may, therefore, be concluded that ships of war are subject to such treatment as is not contrary to the laws of war and as military necessity permits.

*Hospital ships.*—The provisions in regard to the treatment of hospital ships are fully set forth in the convention for the adaptation of the principles of the Geneva convention to maritime warfare.

*Institute of International Law, 1913.*—Article 47 of the *Manuel des lois de la guerre maritime*, sanctioned by the Institute of International Law in 1913, provided that—

Boats engaged exclusively in the coast fishery and small boats engaged in local trade, including those engaged in pilot and lighthouse service, as well as the boats built to navigate principally on rivers, canals, and lakes, are exempt from seizure, as well as their fittings, sails, equipment and cargo. It is forbidden to take advantage of the innocent character of such boats to employ them for any warlike purpose while preserving their peaceful appearance.

*Cartel ships.*—As cartel ships are commissioned for the performance of special services recognized as of mutual advantage to both belligerents these ships should be allowed to perform these services. The cartel, being an agreement between enemies, should be strictly interpreted and has always been thus interpreted.

Cartel ships lose their exemption if they violate the terms of the cartel. They must confine their action within its provisions—i. e., the agreement for the exchange of prisoners does not permit trade, the carriage of passengers or dispatches. Such ships are not to carry arms, though a cannon for firing signals may be allowed. The exemption ceases with the performance of the function, but in the case of exchange of prisoners the direct voyage to the place of embarkation and the direct voyage home may be regarded as within the period of service. Such ships must also comply with any special obligations imposed upon them. These vessels may therefore be regarded as exempt only when conforming very strictly to the letter of the provisions of the cartel.

*Vessels engaged in scientific, philanthropic, religious work, or in exploration.*—Among the earliest exemptions of vessels from capture by an enemy was the exemption

extended to vessels engaged in exploration and discovery. It was considered as of advantage to all States that those navigators who were risking their lives and ships upon voyages of exploration should not be liable to capture in order that they might proceed freely. This exemption developed more particularly in the eighteenth century, when there was commonly joint agreement to exempt from interference certain vessels whose status had previously been made known by notification. Often these vessels were granted safe-conducts by foreign States. With the decline of such undertakings this form of exemption has become less important, though occasionally met, and the reasons for exemption seem as valid now as formerly, and such vessels would now probably be classed with those engaged in scientific missions.

As exploration and discovery was an early form of scientific mission upon which vessels ventured, the exemption established for such undertakings was later extended to other analogous undertakings. Voyages for special scientific investigations were protected by general exemptions on the ground that the advance in scientific knowledge of the sea would be of benefit to all, and the exemption was accordingly made general.

Until comparatively recent years vessels have not engaged in strictly philanthropic and religious missions. There was no doctrine of exemption. At the Second Hague Conference in 1907 the Italian delegate proposed the exemption of such vessels, and it was included as article 4 of the convention relative to certain restrictions on the exercise of the right of capture in maritime war.

ARTICLE 4. Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

While it is understood that this immunity is dependent upon innocent employment, as stated in regard to coast fishing vessels and small boats employed in the local trade, as specified in the preceding article, it might be advantageous in a subsequent draft of the convention to rearrange the clauses so that it should be entirely clear that this exemption is conditioned upon innocent conduct. There is also ample reason why such vessels

should be previously made known by notification. This is not necessary in case of the coast fishing vessels the character of which is easily discernible from construction and other marks. It would, however, be essential in the case of certain vessels engaged in scientific or philanthropic work that there be distinctive marks, if possible, and safe-conducts or other evidence of a character which entitled to exemption. The Italian proposition contained a provision to that effect, to which there seems to have been no objection. (*Deuxième Conférence Internationale de la Paix*, Tome I, p. 271.) These vessels should therefore be exempt from interference so far as military necessities may permit.

*Lighthouse vessels.*—As the lighthouse vessels are so closely related to the conduct of the hostilities, and as such vessels may at times be used and have been used for warlike purposes, these vessels should not be granted exemptions, except when innocently employed, by special agreement or by grace without obligation or liability.

In case exemption is granted by conventional agreement, the means and method of effective control should be provided. As this has not thus far been provided, lighthouse vessels serving the lighthouses of the enemy should be regarded as enemy vessels and should be treated as vessels engaged in the public service of the enemy. The fact that such vessels are engaged in the lighthouse service need not be notified, but some exemption may as occasion arises be granted unless there is reason to suspect that they are not innocently employed.

*Revenue vessels.*—Vessels engaged in the revenue service being in most States closely related to the naval control should not be granted any exemption unless under special and definite agreement. Under ordinary circumstances there would be no reason making necessary the notification of the names of such vessels. As the revenue service is usually strictly national and has as its purpose to enforce the collection of the national revenue and thus increase the national resources, there might seem to be a legitimate reason for the treatment of such



vessels as vessels clearly engaged in the enemy service and liable to the full consequences of war.

*Other vessels.*—In addition to lighthouse and revenue vessels, there may be other vessels which are engaged in public or quasi-public service, which are easily convertible into vessels for use in war. Such vessels will, like lighthouse and revenue vessels, be liable to capture unless exempt by special agreement and conforming to the provisions of the agreement. Thus the exemption as to public vessels would be confined, except under special arrangement, to hospital and cartel ships, and to vessels engaged exclusively in scientific, philanthropic, and exploration service, and all others would be liable to capture.

*Conclusion.*—Even though there have been propositions to include other vessels under the classes granted exemptions, considering the present tendencies of international opinion and practice, the following general classification seems to be approved for public vessels:

*Classification of public vessels.*

1. Vessels of war, all vessels under public control for military or hostile purposes.
2. Hospital ships under X Hague convention for the adaptation to maritime war of the principles of the Geneva convention.
3. Cartel ships.
4. Vessels engaged exclusively in scientific or philanthropic work or in exploration.
5. Other vessels.

*Treatment of public vessels.*

1. Vessels of class 1 may, according to the rules of war, be captured or destroyed.
2. Vessels of class 2 are exempt from capture when conforming to X Hague Convention.
3. Vessels of class 3 are exempt from capture when conforming strictly to the terms of the cartel agreement.
4. Vessels of class 4 are exempt from capture when their status has been made known by notification and when innocently employed.
5. Other vessels are liable to capture.

## TOPIC II.

### REGULATIONS RELATING TO FOREIGN VESSELS OF WAR IN WATERS UNDER THE JURISDICTION OF THE UNITED STATES.

What should be the regulations relating to foreign vessels of war in time of peace and in time of war?

#### CONCLUSION.

From discussion of the needs in time of peace and in time of war and from the principles embodied in regulations issued by other States the following regulations may be proposed for the United States:

### REGULATIONS RELATING TO FOREIGN VESSELS OF WAR IN WATERS UNDER THE JURISDICTION OF THE UNITED STATES.

#### *General.*

1. The term "vessel of war" applies to all vessels under public control for hostile or military purposes.

#### *I. In time of peace.*

2. In general, foreign vessels of war need no special authorization to enter American waters, but previous notice of intended arrival should be given through diplomatic channels. Foreign vessels of war are, however, excluded from certain American waters.

3. Not more than three foreign vessels of war of the same flag shall at the same time sojourn in any naval district without specific authorization.

4. The sojourn of foreign vessels of war in American waters is limited to 15 days unless a longer period is specifically authorized.

5. Foreign vessels of war must leave American waters within six hours if requested by the authorities, even if the limit of time of their sojourn has not expired.

6. Foreign vessels of war are subject to regulation as to anchorage.

7. Foreign vessels of war must observe the regulations to which American war vessels are subject, except as to customs inspection.

8. The taking of soundings, except as required for immediate safe navigation, the making of surveys, the use of submarine or air craft, target or similar practice, in American jurisdiction are prohibited, though any of these may be specifically authorized.

9. Arms other than the dress arms of officers are not to be worn outside the foreign vessels of war except by special authorization.

10. Disregard of any of the above regulations will be reported to the senior officer present of the foreign war vessels, and the vessel or vessels may be requested or may be required to leave American jurisdiction immediately.

11. The above regulations do not apply when a foreign vessel of war is carrying the sovereign or is upon a special diplomatic mission. The arrangements for the treatment of such vessels should be made through diplomatic channels.

12. Vessels of war may be granted special privileges in case of vis major.

13. In general, the passage through canals is permitted only after notification by diplomatic channels and after permission is granted.

## *II. When United States is at war.*

14. In time of war any foreign vessel, public or private, even with permission, enters American waters at its own risk.

15. Desire to enter American waters between sunrise and sunset shall be made known by flying the national flag with the signal for pilot, but the vessel must remain outside of American waters till permission to enter is granted.

16. Entrance to American waters during the night is prohibited. Desire to enter American waters between sunset and sunrise shall be made known by such signals as do not admit of mistake, but the vessel must remain outside American waters till permission to enter is granted. The same rule applies in fog or in storm.

17. If permission is granted, the foreign vessels must strictly observe its provisions.

18. Any vessel entering American waters without permission does so at its peril, and such force may be used against it as the American authorities deem necessary.

## NOTES.

1. *General*.—The idea that the term “vessel of war” should apply to all vessels under public control for hostile or military purposes seems to meet with general approval. There are many regulations accepted in practice among States determining the treatment of armed public vessels. It is also now generally admitted that these regulations extend to the vessels which are auxiliary to the Navy and under commissioned officers, and to transports and other vessels which may be used for hostile purposes. There are, as has been shown, many other public vessels whose purpose is not to carry on war and whose treatment will not be the same as that accorded to vessels of war.

2. *Entrance of vessels of war in time of peace*.—In absence of any regulation to the contrary it has been generally admitted that a vessel of war may freely enter the ports of the United States. This doctrine has also the sanction of the decision of the Supreme Court of the United States in early cases. Wheaton says that—

If there be no express prohibition, the ports of a friendly State are considered as open to the public armed and commissioned ships belonging to another nation with whom that State is at peace. (Int. Law, sec. 95.)

Pradier-Fodéré, mentioning that Ortolan follows Wheaton, says:

Je ne comprends pas cette doctrine, car l'entrée des vaisseaux de guerre étrangers dans un port peut être inoffensive la veille et devenir dangereuse le lendemain; la prohibition est de nature politique, et tout ce qui tient de la politique est subordonné aux circonstances. (Droit International Public, vol. 5, sec. 2462.)

Pradier-Fodéré maintained on that account that a State should be free to determine whether a foreign vessel of war should be admitted and that a prior conventional agreement is not necessary to justify the exclusion of a foreign ship of war, but that a State may of its own volition close a port. The closure of a port which has long been open should not be without reason, though the State within whose jurisdiction the port is, may deter-

mine the adequacy of the motive. Notice of restrictions upon the entrance to a port should be given.

Later opinion seems to support the view that a State may close or regulate the entrance to its ports, but that a port which has been freely open should not in general be closed without notice—in other words, that the prohibition of entrance is properly within the competence of the State but is not presumed.

The development of vessels of war has seemed to change opinion somewhat. In earlier times when the presence of a few vessels of war would not unduly endanger any port reasonably defended there was no demand for restriction. Sometimes it was thought advantageous to have ships of a possible enemy in port in order that they might the more easily be seized. At the present time the more powerful vessels of war if permitted without restriction to enter ports might constitute a formidable menace. For this and other reasons there has developed in recent years the idea that the proposed entrance of a ship of war to a foreign port should if possible be made known in advance. Possible embarrassments may be avoided by such procedure. A naval force belonging to the State having jurisdiction over the harbor may be drilling and may prefer that foreign observers should not be in the neighborhood. The practice of giving advance notice of entrance to a foreign port has now become common and in some States is regarded as almost obligatory. The advantages of such a notice for both parties when entrance is with a legitimate object, are so many that it may justly be regarded as the best form and is tending to become general.

The rule seems reasonable for the United States that foreign vessels of war need no special authorization to enter American waters, but previous notice of intended arrival should be given through the diplomatic channels.

*German regulation.*—The German regulation provides that ships or vessels of war of foreign States do not need special authorization to enter German ports, whether or not fortified, or to enter the estuaries, rivers,

or inland waters. It is, however, necessary that their visit should be announced in ample season through diplomatic channels. Without such notification ships and vessels of war of foreign States, except those carrying the head of a State or his accredited representative, or except those in distress, may not pass the outer line of fortifications. (*Marine-verordnungs-blatt*, 1910, no. 15.)

*French regulation.*—The French regulations of May 21, 1913, provide that the notification of a proposed visit, if circumstances permit, ought to be made through diplomatic channels seven days in advance. Exceptions are made as in the case of the German rules and also for ships engaged in supervision of the fisheries under treaty provisions.

Other States have made special rules to cover special waters.

*Restrictions as to ports in United States.*—The policy of restriction upon the entrance to ports prevails likewise in the United States. This restriction has been made known to naval officers as follows:

1503. (1) It has been ordered that the following-named harbors, Tortugas, Fla.; Great Harbor, Culebra; Guantanamo Naval Station, Cuba; Pearl Harbor, Hawaii; Guam; Subig Bay, Philippine Islands; Kiska, Aleutian Islands, are not, and that they shall not be made, subports of entry for foreign vessels of commerce, and that said harbors shall not be visited by any commercial or privately owned vessel of foreign registry; nor by any foreign national vessel, except by special authority of the United States Navy Department in each case. (Executive Order, Sept. 23, 1912.)

(2) Foreign Governments have been notified that permission must be obtained from the Secretary of the Navy through their respective diplomatic representatives at Washington before their men-of-war or other public vessels may enter the actual limits of a navy yard or naval station of the United States.

(3) For the proper control, protection, and defense of the naval station, harbor, and entrance channel at Pearl Harbor, Territory of Hawaii, the Secretary of the Navy is authorized, empowered, and directed to adopt and prescribe suitable rules and regulations governing the navigation, movement, and anchorage of vessels of whatsoever character in the waters of Pearl Harbor, Island of Oahu, Hawaiian Islands, and in the entrance channel to said harbor, and to take all necessary measures for the proper enforcement of such rules and regulations. (U. S. Navy Regulations, 1913, No. 1503.)

*Regulation as to entrance in time of peace.*—The changes in recent years seem to indicate that a reasonable regulation might be drawn on the following lines: In general, foreign ships of war need no special authorization to enter American waters, but previous notice of intended arrival should be given through the diplomatic channels. Foreign ships of war are, however, excluded from certain American waters.

3. *Number of vessels of war.*—Until recent years little attention has been paid to the question of the number of vessels of war which might be admitted to a port in the time of peace. Perhaps limitations were first imposed because of fear on the part of the State having jurisdiction over the port lest its own safety might be imperiled if many foreign vessels of war were to be admitted at the same time. This was particularly true in case of certain small States. The idea gradually gained ground that it would be advantageous for all States to limit the number of foreign ships of war which might be at the same time in a port. It was implied that if some such regulation should not be made, the safety of a neighboring State might be put in jeopardy. This might happen through the assembling of a large fleet in neighboring ports just before a declaration of war and preparatory to a declaration of war. While each State might, in the absence of regulations, have an equal right to assemble ships, the situation of a port might make such a procedure advantageous to one of the States while conferring no advantage upon the other. The difference in speed and the increase in fighting capacity of vessels of war have made them such powerful and effective instruments that States even in time of peace, are now much more concerned than formerly as to their conduct and nearness. This is seen in the rules already issued by States in regard to foreign vessels of war in territorial waters.

*Foreign regulations as to number.*—The French regulations of May 21, 1913, provide that the number of vessels of war flying the same flag should not be more than three in a district, the western coast forming two districts, the southern coast one district with Corsica, and the African coast one district.

The German regulations of July 26, 1910, also limit the number of foreign vessels of war flying the same flag to three, unless special permission has been obtained through diplomatic channels.

The question has been raised as to whether the same regard should be paid to number without consideration of the character of the vessel of war. Some have proposed to regard three battleships as the number ordinarily admitted, but to allow a larger number of torpedo boats or small vessels, pointing out that one battleship would ordinarily be accompanied by several smaller vessels. The complications which might arise in time of peace seem to be met by the provision that the admission of more than three vessels be only upon special permission and authorization.

*Regulation proposed.*—To embody the right to limit the number while allowing freedom to the receiving State the following regulation may be proposed as consistent with the general trend: Not more than three foreign vessels of war of the same flag shall at the same time sojourn in any naval district without specific authorization.

4. *Length of sojourn.*—In time of peace it is generally admitted that every courtesy should be extended to foreign vessels of war. At the same time, it might for many reasons be inexpedient to allow a foreign ship of war to remain indefinitely in territorial waters as a matter of right. The navy of the State having jurisdiction over the waters might wish to maneuver or to carry out plans which would be inexpedient in the presence of foreign naval observers. If no time limit is prescribed, a suggestion that the ship of war depart might be regarded as short of proper treatment. If a period is prescribed in advance, no offense could be taken and the sojourn beyond the period would be only after renewed permission had been granted.

A period which would be liberal for all purposes and give evidence of courteous and friendly disposition should be allowed in ports to which vessels of war are admitted. This period should not be unduly long that the receiving State may not be inconvenienced. A period of 15 days seems to be reasonable and liberal.



*Foreign regulations as to sojourn.*—The length of time which vessels of war may sojourn in foreign ports has received consideration because theoretically ships of war might remain indefinitely in time of peace unless there is a time specified. The harbor facilities may be insufficient to accommodate a large number of vessels for a long time or there may be other reasons for limiting the period of sojourn. Accordingly, to avoid misunderstanding it seems expedient that permission should be limited. The permit to enter sometimes contains the statement as to the length of sojourn allowed. France has enacted a rule prescribing a fortnight unless a special extension is obtained. This period seems reasonable from all points of view and being specific, the foreign ship of war would be under obligation to obtain permission for a longer stay.

Some States have prescribed longer or shorter periods according to geographical conditions.

*Regulation proposed.*—In order that a reasonable time may be allowed ordinarily, and in order that there may be the possibility of longer stay if there be a special reason, regulations have been somewhat flexible. The following seems to meet the requirements generally approved:

The sojourn of foreign vessels of war in American waters is limited to 15 days unless a longer period is specifically authorized.

5. *Departure on notification.*—There may be reasons why vessels of war, which under ordinary circumstances would be permitted to remain 15 days, should depart without delay.

The necessity under which the receiving State may be through the possible approach of hostilities may be a sufficient cause. Even a somewhat remote prospect of war might make it necessary to prepare for war in a certain port. This preparation might require immediate departure of foreign ships of war. A State should be free to request such departure without stating reasons, and the request should be heeded without delay.

The conditions in a neighboring State may be such that the sojourn of certain vessels of war might be a threat to the peace or well-being of that State and might be construed as evidence of an unfriendly disposition. The State in

whose waters the foreign ships of war may be must be free to judge under such conditions whether the ship of war should be requested to depart in order that its territory might not be used as a base preparatory for war.

In general, as a State has jurisdiction over its territorial waters, it is entitled to exercise this jurisdiction in a reasonable manner. Provision should be made for requesting the departure of foreign vessels of war whenever a State may deem it expedient, and this departure may be requested without statement of reason.

If the circumstances are not exceptional, a ship of war could be ready for departure within six hours after request. Accordingly, six hours might be a reasonable delay to mention in conveying the request. If longer time should be necessary, this could be specially considered.

*Foreign regulations in regard to departure.*—While cases of request to vessels of war to leave foreign ports have not been common, there seems to be a growing opinion that such requests may at times be necessary. Accordingly, certain States have made known that foreign ships of war within their ports might be requested to depart, and on request would be under obligation to leave.

The Belgian decree of October 30, 1909, names six hours as the time within which foreign ships of war should depart when notified.

France, in the regulations of May 21, 1913, also prescribes six hours as the period after notice, even though the time granted at admission may not have expired.

The German regulations of July 26, 1910, provide for forcible expulsion in case a ship of war does not move on notification, though it is presumed that reasonable time would be allowed.

The Italian law of August 20, 1909, provides that vessels shall betake themselves beyond range within 12 hours.

Other regulations seem to show that, considering the speed of modern vessels of war and the presumed preparedness of a ship of war in a foreign port, a six-hour allowance would not be too short.

*Regulation proposed.*—Foreign vessels of war must leave American waters within six hours if requested by the authorities, even if the limit of time of their sojourn has not expired.

6. *Anchorage.*—As vessels of war are granted special privileges in foreign ports, there is reason for care in following the port regulations, in order not to put the local authorities to any inconvenience. The place of anchorage is usually determined by the local authorities and may be assigned for special reasons. A port may be mined, military or other operations may be in process which may make it desirable that foreign vessels of war be kept within certain areas. No complaint can be made, as the local authorities must be permitted to determine such matters. For similar reasons a vessel of war may be requested to change her anchorage to another designated place in a harbor.

At the present time it has also become common for many States to refuse to vessels of war the privilege of anchoring in certain waters. This also is regarded as entirely within the competence of a State.

*Foreign regulations as to anchorage.*—As many ports in foreign States are more extensively fortified and more continuously in a state of preparation for war than American ports, the regulations in regard to the place of anchorage of foreign ships of war are frequently very specific.

The States having ports on the Baltic Sea have, in general, promulgated detailed regulations in regard to the method, time, and place of anchorage, sometimes providing for the change of place of anchorage and the formalities in connection therewith. The other European States have, in some cases, equally detailed regulations, but all assume full right to regulate anchorage.

*Regulation proposed.*—As reason and practice agree, the United States may properly make an announcement accordingly: Foreign vessels of war are subject to the port regulations as to anchorage.

7. *Port regulations.*—The regulations in regard to the use of a port are usually to some degree determined by local necessities. These necessities vary in different ports.

Sometimes port regulations are or seem to be arbitrarily established and without particular reason. Whatever may be the basis of the ordinary regulations established for and extending to other foreign war vessels, the similar vessels of the United States must give them respect. As such regulations must be respected by vessels of war of the United States in foreign waters, foreign vessels of war must respect the regulations of the United States established for the use of its ports. These regulations would particularly relate to such matters as quarantine, etc.

*Quarantine.*—The positive obligation of the rules for observance of quarantine is emphasized by the regulations of the United States.

3801. (1) Commanding officers of ships shall on entering a port, foreign or domestic, comply strictly with all its quarantine regulations.

(2) They shall, whether liable to quarantine or not, afford every facility to visiting health officers and give all the information the latter may require.

(3) Should doubt exist as to the regulations of the port, no communication shall be held with the shore, with boats, or with other ships until a sufficient time has elapsed to allow of the visit of the health officer.

3802. (1) Should a naval vessel arrive in port with a quarantinable disease on board, or should such disease break out while lying in port, the fact shall be at once reported to the commander in chief or senior officer present; the commanding officer shall hoist the quarantine flag and prevent all communication likely to spread the disease elsewhere until pratique is received.

(2) In order to check the spread of such disease on board ship, he shall arrange with the authorities of the port for the care and treatment of patients on shore or on board a hulk.

(3) If at sea in company with other ships and a quarantinable disease exists or appears on board, he shall keep the quarantine flag flying as long as the disease lasts and shall do all in his power to prevent its dissemination.

3803. (1) In boarding arriving vessels care shall be taken not to violate the rules of the port, and in case they are subject to quarantine the boarding officer shall, if possible, obtain the information required without going alongside.

(2) Vessels at sea coming from a suspected port not having a clean bill of health or otherwise liable to quarantine shall not be boarded unless it be absolutely necessary, and the fact of such communication, when it occurs, shall be reported on arrival in port to the health officer.

(3) No concealment shall be made of any circumstances that may subject a ship of the Navy to quarantine. (U. S. Navy Regulations, 1913.)

*Netherlands regulation.*—The regulation of October 30, 1909, of the Netherlands provides, in article 12, that ships of war of foreign States sojourning in Dutch jurisdiction, if they do not observe the rules prescribed, may be invited to depart, and, if it is necessary, may be compelled by force.

*French regulations.*—The French decree of May 20, 1913, article 10, provides:

Dans un cas où un bâtiment de guerre étranger ne se conformerait pas aux règles édictées par le présent décret, l'autorité maritime ou militaire locale attirera d'abord l'attention de l'officier commandant sur la contravention commise et l'invitera formellement à observer les règlements. Si cette démarche échoue, l'autorité qualifiée, préfet maritime, commandant de la marine ou commandant d'armes, pourra inviter le bâtiment de guerre étranger à quitter immédiatement le port ou les eaux territoriales.

*Foreign port regulations.*—The port regulations of some foreign States are, as regards vessels of war, also very elaborate. Even the ceremonial to be observed for commanding officers of different grades is prescribed in detail. Provisions are made for conformity to fiscal and sanitary regulations, in regard to landing of forces, the circulation of boats in port, funeral honors, etc. Certain States reserve the right to send with a visiting ship of war one of their own naval officers in order to facilitate the observance of the local regulations. Statements in regard to the ship of war itself are required in some ports. The rules in regard to pilotage vary greatly and change from time to time.

*Regulation proposed.*—It is not possible to announce in advance what rules may be necessary. Vessels of war are, however, exempt from customs inspection. The following rule seems to cover present practice: Foreign vessels of war must observe other port regulations to which American war vessels are subject, except as to customs inspection.

8. *Taking of soundings, use of submarines, aircraft, target, or similar practice.*—The taking of soundings was formerly regarded as a form of scientific investigation or exploration and was carried on with a considerable degree of freedom. At the present time, sounding within the

maritime jurisdiction of a foreign State is regarded as in excess of the right of a vessel except that when necessary soundings required for the immediate safety of the ships may be made.

As the movements of submarine vessels are or may be secret and may involve risk, the operations of such vessels in foreign waters is also in excess of right and should require special permission.

The use of aircraft forming a part of the equipment of a ship of war while it may not be secret as in the case of a submarine may permit observations which a foreign State may prefer should not be made. This might be particularly true when in the neighborhood of fortifications or mined areas. Accordingly, it seems proper that the use of aircraft over foreign ports and waters should require express permission and that in the United States such use should require special authorization.

Target practice, torpedo practice, and similar exercises by foreign ships have long required special authorization. There has been general assent that such limitation is reasonable and the grounds are so many and so evident that discussion is not necessary.

*Foreign regulations as to soundings, use of submarines, aircraft, etc.*—In recent years, with the introduction of new methods of warfare, regulations in regard to conduct of ships of war in foreign ports have become more specific. The taking of soundings and making of surveys is generally prohibited unless definite authorization is granted. These regulations seem to be entirely proper, as a foreign ship of war can not claim rights other than those which would be implied in hospitable treatment. The use of submarine and of aircraft is held to involve risks to which a foreign port should not be liable. Target practice is generally prohibited, though in special cases permits have been granted for such practice on unsettled and remote coasts; even practice in the placing of mines is prohibited in the regulations of certain States. The discharge of torpedoes is also frequently prohibited. The use of foreign waters for any purpose which would render a ship of war directly more efficient for war purposes

seems to be discouraged or prohibited with general assent of nations.

*Regulation proposed.*—The taking of soundings, except as required for immediate safe navigation, the making of surveys, the use of submarine or aircraft, target or similar practice in American jurisdiction are prohibited, though any of these may be specifically authorized.

9. *Carrying of arms.*—Many States prohibit the entrance of foreign armed forces within their land area. Armed foreign ships may be allowed within their ports, but the personnel of such ships are not permitted to go ashore under arms unless by special arrangement. Officers, however, may be required to go ashore in official capacity and as part of their official dress may wear the side arms recognized as appropriate.

*Regulation proposed.*—Arms other than the dress arms of officers are not to be worn outside the foreign vessels of war except by special authorization.

10. *Disregard of regulations.*—It may happen that regulations may be disregarded intentionally or unintentionally. Subordinate officials may be careless or ignorant of the requirements of different ports. As action against a subordinate official might create misunderstanding or disturb the relations existing between States, it is considered less liable to create misunderstanding to report the facts to the commanding officer of the foreign force who is in fact officially responsible. As this officer has the authority to determine the action of his subordinates, it may be inferred that the act in regard to which there is some question if continued or repeated, is with the approval of the commanding officer. If there be a disposition to misuse the privileges of a port of the United States, a request to depart is a mild measure and if not heeded, there is a right to use such force as may be necessary to compel the vessel to depart.

*Regulation proposed.*—It is advisable that definite action be taken if the rules established for the conduct of a foreign vessel of war be disregarded and the following rule conforms to that usually accepted: Disregard of any of the above regulations will be reported to the senior officer of

the foreign war vessels and the vessel or vessels may be requested or may be required to leave American jurisdiction immediately.

11. *Exemptions for public officials.*—The general rule for exemption from local jurisdiction of sovereigns and those who represent the sovereign power extends to the vessels which bear them. It is the established custom to give the widest possible freedom from all local restraints to such vessels. In order that this may be done and in order that the proper marks of respect may be shown to the visiting officials, early notice should, when possible, be given through the diplomatic channels.

*Regulation proposed.*—The above regulations do not apply when a foreign ship of war is carrying the sovereign or is upon a special diplomatic mission. The arrangements for the treatment of such vessels should be made through diplomatic channels.

12. *Vis major.*—Even in harbors which are ordinarily closed foreign vessels of war may be admitted under exceptional and pressing circumstances. The rights of humanity will prevail over the restrictions based upon political or other grounds and a vessel of war if in distress because disabled, or in want of necessary supplies in order to keep the sea, should be admitted to repair or take on necessary supplies. The local port regulations may be suspended or be waived in cases where a foreign ship of war is in actual and immediate distress.

*Regulation proposed.*—Vessels of war may be granted special privileges in case of vis major.

13. *Use of canals.*—As a canal is usually constructed at the expense of some state or of its citizens, it is usually regarded as specially subject to regulation by such state or by the state through whose territory it may pass. The nature and object of canals may vary. Some may be primarily for military purposes; others may be predominantly commercial or these purposes may be fairly balanced. Unless there are special treaty provisions, a canal would be considered as within the jurisdiction of the state through whose territory it passes and subject to its regulation.



Certain canals are usually kept open for general commerce, as the Kiel and Corinth Canals, but may be closed at the will of the state within whose territories they are. Germany and Greece reserve the right to make whatever regulations may seem best in regard to the use of their canals. In absence of treaty provisions, a state undoubtedly may regulate or even prohibit the passage of vessels of war through a canal within its jurisdiction, and in general, passage would be granted to vessels of war only after permission had been secured through diplomatic channels.

*Panama Canal.*—The use of the Panama Canal is by treaty of November 18, 1901, under similar restrictions to those governing the use of the Suez Canal, though the United States has "the exclusive right of providing for the regulation and management of the canal."

*Suez Canal.*—The regulations for the passage of the Suez Canal are detailed. The place of anchorage, the time of entrance, etc., may be prescribed. Equality of treatment is, however, assured to vessels passing through the canal. The convention of Constantinople of 1888, signed by nine powers, provided that the Suez Canal "shall always be free and open, in time of war as in time of peace, to every vessel of commerce or of war without distinction of flag." Belligerent rights were not to be exercised in the waters of the canal.

*Project of interparliamentary union.*—The commission of the interparliamentary union in 1913, desirous of devising rules which would apply to all interoceanic straits and canals, suggested the adoption of the following principles:

(a) The express recognition of the right of free passage to vessels of commerce without distinction of flag in time of peace and war in all straits uniting two seas which are not inland seas and interoceanic canals proper.

(b) The strict prohibition of blockade of these straits and canals.

(c) The interdiction to place mines or torpedos completely obstructing the passage of these straits and canals and the obligation of advising all ships of the placing of mines and torpedoes in the neighboring territorial waters.

(d) The interdiction to put out, even in time of war, the lighthouses which delimit the passage of these straits and canals.

(e) The recognition in the treaties concerning straits and canals of the use of arbitration or other means, amicable or judicial, for the settlement of disputes relating to the application or the interpretation of these treaties. (XVIII Conference Interparlementaire, La Haye, 1913, p. 40).

*Regulation proposed.*—Considering that canals vary in nature and in status, a general regulation only may be proposed: In general, the passage through canals is permitted only after notification by diplomatic agent and after permission is granted.

## II. VESSELS IN WATERS OF UNITED STATES IN TIME OF WAR.

14. *Entrance of foreign vessels in time of war.*—The entrance to ports of a belligerent State or under belligerent control usually depends upon the flag of the vessel desiring to enter. Neutral vessels may be allowed to enter certain ports as in time of peace, while the entrance to others may be entirely closed. A neutral has no right to question the military necessity which may lead to the restriction upon the entrance to a port or the entire closing of the port. Since the Second Hague Conference of 1907 it is necessary in general that the neutral be notified in advance of the existence of war, and after such notification, the neutral is supposed to take precautions. The entrance, however, must be considered as under the laws of war. The vessel which is permitted to enter may presume that no other risks than those ordinarily incurred in war are involved in entrance.

Certain classes of vessels of the opposing belligerent may be allowed to enter under similar conditions.

In ports that are fortified or where there are ships of war there is always a possibility of hostilities. In case of such hostilities, neutral vessels and vessels not related to the hostilities will be preserved so far as military necessities permit. Such vessels, if in the line of fire or within the field of action, may suffer from the hostilities, and from these risks no State can guaranty vessels within its waters even though the vessels had permission to enter these waters.

*French regulations in 1913.*—The French decree of May 26, 1913, gives detailed regulations for which the minister of the marine gives reason:

I. Rapport au Président de la République Française:

PARIS, le 26 mai 1913.

MONSIEUR LE PRÉSIDENT: Les dispositions du décret du 19 juillet 1909 fixent une zone d'interdiction d'une largeur uniforme de 3 milles, pour la protection du littoral français en temps de guerre, et édictent des conditions d'accès identiques pour les bases d'opérations de la flotte et pour les ports de commerce. Il m'a paru nécessaire, pour assurer dans de meilleures conditions la sécurité de nos grands ports de guerre, d'étendre à 6 milles la zone d'interdiction située au large de leurs fronts de mer, la mettant ainsi en rapport avec la portée des armements modernes; de différencier les conditions d'accès de ces ports, dont la défense est organisée, afin de leur permettre de remplir leur rôle de bases d'opérations de la flotte, de celles relatives aux ports de commerce uniquement protégés dans le but de les préserver des insultes de l'ennemi; enfin d'apporter des précisions sur les formes sous lesquelles l'accès des ports français devait être demandé et accordé. J'ai l'honneur de soumettre à votre haute sanction le projet de décret ci-joint qui modifie, sur les points énoncés, les dispositions du décret du 19 juillet 1909.

Je vous prie d'agréer, Monsieur le Président, l'hommage de mon profond respect.

Le Ministre de la Marine:

PIERRE BAUDIN.

(Revue Générale de Droit Int. Public, vol. 21, 1913; Documents, p. 56; also Journal Officiel, 14 juin 1913, p. 5097; 18 juin, p. 5234.)

II. Décret:

Le Président de la République française, vu le décret du 19 juillet 1909, réglant, pour le temps de guerre, les conditions d'accès et de séjour des navires autres que les bâtiments de guerre français dans les mouillages et ports du littoral français, sur le rapport de Ministre de la Marine, décrète:

ARTICLE 1. En temps de guerre, les conditions d'accès et de séjour des navires autres que les bâtiments de guerre français dans les mouillages et ports du littoral français et des pays de protectorat sont réglées par les dispositions précisées dans les articles suivants:

ART. 2. Aucun navire de commerce français, aucun navire étranger, de guerre ou de commerce, ne peut, sans s'exposer à être détruit, s'approcher des côtes dans les eaux territoriales françaises ou des pays de protectorat à moins de 3 milles, avant d'y avoir été autorisé. Cette zone d'interdiction est portée à 6 milles des côtes au large des bases d'opérations de la flotte, entre les limites fixées ci-après au titre de chacune d'elles: Cherbourg: du méridien du cap Lévi au méridien de la pointe de Jardeheu; Brest: du parallèle du phare du Four au parallèle de la pointe du Raz; Toulon: du méridien du Bec de l'Aigle

au méridien du cap Bénat; Bizerte: du méridien du Raz Enghela au méridien du cap Zébib.

ART. 3. Entre le lever et le coucher du soleil, tout navire visé par le présent décret doit porter son pavillon national et son numéro du code international (s'il en possède un) dès qu'il s'approche de la zone interdite. S'il désire y pénétrer, il en fait la demande en hissant le pavillon de pilote, mais il se tient en dehors de cette zone jusqu'à ce que l'entrée lui ait été accordée par un sémaphore, un poste de signaux ou un bâtiment d'arraisonnement. La réponse d'un sémaphore ou d'un poste de signaux est faite par les signes suivants du code international: Pavillon S: entrée accordée; Flamme D: entrée différée; Pavillon Q: entrée interdite. Si la demande est accordée, le navire entre à vitesse réduite dans la zone interdite en conservant battant le pavillon d'appel de pilote. Si l'entrée est différée, le navire manœuvre pour laisser libre l'entrée des passes, attend le bâtiment d'arraisonnement et se dirige vers lui à vitesse réduite quand il l'a aperçu. Si l'entrée est interdite, le navire doit renoncer à entrer et doit gagner un autre mouillage. Le bâtiment d'arraisonnement se distingue par trois boules hissées sur la même drisse.

ART. 4. Entre le coucher et le lever du soleil, tout navire visé par le présent décret doit porter son pavillon national et avoir ses feux de navigation allumés dès qu'il s'approche de la zone interdite. S'il désire y pénétrer, il en fait la demande en brûlant un ou plusieurs feux de bengale, appuyés d'appels au sifflet ou à la sirène; mais il se tient en dehors de cette zone jusqu'à ce que l'autorisation d'y pénétrer lui ait été accordée par un bâtiment d'arraisonnement. Le navire, les feux de navigation clairs, attend ce bâtiment d'arraisonnement en brûlant au besoin de nouveaux feux de bengale pour attirer son attention et, s'il n'a pas été semoncé, peut se diriger sur lui à vitesse réduite quand il l'a aperçu. Le bâtiment d'arraisonnement se distingue par trois feux rouges superposés.—Un feu coston rouge, brûle d'un poste à terre, signifie que l'entrée est interdite; le navire doit alors renoncer à entrer et doit gagner un autre mouillage. Entre le coucher et le lever du soleil, il est interdit, en principe, à tout navire visé par le présent décret de demander à pénétrer dans les zones situées au large des bases d'opérations de la flotte: Cherbourg, Brest, Toulon, Bizerte, définies à l'article 2; les seuls cas où les capitaines puissent demander l'entrée sont les suivants: Bâtiments autorisés à le faire par gouverneur, soit à leur départ, soit en cours de route; bâtiments en danger et dont l'impossibilité absolue d'attendre à la mer le lever du jour ou de gagner un autre mouillage.

ART. 5. En cas de brume tout navire visé par le présent décret, désirant pénétrer dans la zone interdite, hisse les mêmes signaux que par temps clair et fait des appels au sifflet ou à la sirène jusqu'à ce que l'autorisation d'y pénétrer lui ait été accordée par un bâtiment d'arraisonnement. L'accès des bases d'opérations de la flotte: Cherbourg, Brest, Toulon, Bizerte est interdit en cas de brume dans les mêmes conditions que celles spécifiées à l'article 4.

ART. 6. Tout navire visé au présent décret est tenu de déférer immédiatement aux injonctions d'un bâtiment de guerre ou d'arrondissement, d'un sémaphore ou d'un poste de signaux, faites à la voix, par signaux du code international ou par coup de canon de semonce. Tout navire semoncé par une batterie ou par un bâtiment de guerre doit, quelle que soit sa distance de terre, stopper immédiatement en cassant son erre. Après s'être arrêté tout navire semoncé peut renouveler sa demande d'entrée, mais il doit attendre sur place les ordres qui lui seront notifiés. Si malgré l'avertissement d'un coup de semonce à blanc le navire ne s'arrête pas sur le champ, il sera tiré, deux minutes après, un coup de semonce à obus et, si après un nouvel intervalle de deux minutes le navire n'a pas stoppé et cassé son erre, le feu sera ouvert effectivement contre lui. En cas d'urgence le coup de semonce à blanc peut être supprimé. La nuit le coup de semonce à obus peut également être supprimé et tout navire qui pénètre sans autorisation dans la zone interdite s'expose à être détruit sans avertissement préalable.

ART. 7. Les bâtiments autorisés à pénétrer dans les rades et ports français ou des pays de protectorat devront prendre le mouillage qui leur sera indiqué par l'autorité locale et se conformer strictement aux règlements de toute nature édictés par cette autorité. La durée de leur séjour restera subordonnée aux nécessités d'ordre militaire et, lorsque les circonstances l'exigeront, il pourra leur être prescrit de prendre le large ou de se retirer sur un point déterminé; cet ordre devra être exécuté sans délai, un sursis pouvant toutefois être accordé aux navires qui se trouveraient dans l'impossibilité justifiée de s'y conformer immédiatement. Aucun navire ne pourra appareiller, soit pour changer de mouillage, soit pour quitter la rade, sans en avoir reçu la permission de l'autorité locale; la demande peut être faite par signal: pavillon S.

ART. 8. Dans les rades et ports militaires, entre le coucher et le lever du soleil, toute circulation des embarcations autres que celles appartenant aux bâtiments de guerre français est absolument interdite. Du lever au coucher du soleil cette circulation n'est autorisée que pour les embarcations auxquelles les autorités maritimes auront d'livré un permis de circulation spécial et le moyen de se faire reconnaître. Les embarcations autorisées devront s'écarter des navires de guerre si l'injonction leur en est faite et ne pourront, en aucun cas, les accoster sans en avoir reçu la permission. La circulation de ces embarcations restera en outre soumise aux consignes locales relatives notamment à l'interdiction de pénétrer dans certaines parties de la rade et d'accoster en tout autre endroit que ceux expressément désignés. Dans les ports de commerce, des mesures analogues seront prises par l'autorité locale pour imposer à la circulation des embarcations les restrictions jugées nécessaires, tout en ménageant les intérêts du commerce.

ART. 9. Les visites des bâtiments de guerre neutres restent soumises, en ce qui concerne la notification ou l'autorisation préalables, aux prescriptions du décret du 21 mai 1913, les conditions d'accès et de séjour étant réglées par le présent décret.

ART. 10. Les mesures prévues par le présent décret seront applicables dès la mobilisation ou à la suite d'un avis spécial.

ART. 11. Toute infraction au présent décret, en dehors des risques de destruction auxquels elle expose, entraînera les mesures de répression que comporteront les circonstances.

ART. 12. Sont abrogées les dispositions contraires au présent décret.

ART. 13. Le ministre de la marine est chargé de l'exécution du présent décret.

R. POINCARÉ.

Fait à Paris, le 26 mai 1913.

Par le Président de la République:

Le ministre de la marine, PIERRE BAUDIN.

(Revue Générale de Droit International Public, vol. 20, 1913, Doc. p. 57.)

*Regulation proposed.*—In view of such regulations as the above it would seem that a general regulation may be proposed as follows: In time of war any foreign vessel, public or private, even with permission, enters American waters at its own risk.

15. *Conditions of entrance during day.*—The waters of a belligerent are frequently mined or otherwise protected against the entrance of the ships of an enemy. The use against belligerent vessels of the means of protection may endanger other vessels. If the means of protection is hidden, as in the case of mines, due care should be taken in order that innocent vessels may not suffer injury. As the use of false flags is not yet forbidden in naval war the belligerent may properly assure himself of the identity of any vessel approaching his jurisdiction. Entrance to the waters off an open undefended coast is ordinarily freely open unless there be strategic reasons for closing such waters. Reasonable regulations are necessary for the safety of the belligerent, and such reasonable regulations would certainly include a requirement of due notification by a vessel before it should be permitted to enter belligerent jurisdiction. The form of notification commonly required is the display of the national flag with the signal for a pilot. In order to avoid risk, a vessel should remain outside till permission to enter is granted.

*Regulation proposed.*—Desire to enter American waters, when the United States is belligerent, between sunrise and sunset shall be made known by flying the national flag with the signal for pilot, but the vessel must remain

outside of American jurisdiction till permission to enter is granted.

16. *Entrance during night, fog, or storm.*—What has been said in regard to restrictions upon entrance by day is even more applicable in case of desire to enter belligerent jurisdiction during the night or in time of fog or storm. Proper signals should be displayed and the identity of the vessel should be established.

*Regulation proposed.*—When the United States is a belligerent, entrance to American waters during the night is prohibited. Desire to enter American waters between sunset and sunrise shall be made known by such signals as do not admit of mistake, but the vessel must remain outside American jurisdiction till permission to enter is granted. The same rule applies in fog or in storm.

17. *Entrance under permission.*—Permission to enter belligerent ports should, so far as consistent with military necessity, be granted. As entrance may be dangerous to the vessel entering, such precautions as are possible should be taken in order that the vessel may not be injured. The vessel may, by entrance, acquire knowledge of military conditions which should not be made public. In time of war the circumstances are usually such as would make necessary, both for the safety of the vessel and of the belligerent, that the conditions of entrance under which the permission to enter is granted shall be strictly observed.

*Regulation proposed.*—If permission is granted to enter American waters when the United States is at war, the foreign vessels must strictly observe its provisions.

18. *Entrance without permission.*—In time of war a belligerent may, under present rules, take measures necessary to insure protection of its coasts by the means sanctioned by the law, as by mines, etc.

Ordinarily, as in peace, so in war, neutral commerce with belligerents is subject only to the risk involved in the carriage of contraband, etc. This principle is, however, conditioned upon military necessity which may make it essential that a belligerent really close all or a part of his ports or waters to the entrance of vessels.

*Regulation proposed.*—Any vessel entering American waters without permission when the United States is at war does so at its peril, and such force may be used against it as the American authorities deem necessary.

*General, Foreign regulations as to time of war.*—There are controversies which may easily arise in modern times in consequence of the desire of foreign ships of war to enter or remain in ports in time of war. The greater number of ships of war is a simple reason why there may be more possibilities of misunderstanding. The greater speed may give rise to other complications. The interests which take ships of war into foreign ports sometimes make definite and prior regulations advantageous if not essential. The full statement of the laws of three foreign States may show the course of the development toward regulation.

*Netherlands.*—Decree of the Queen of the Netherlands fixing new rules in respect of the admission of warships of foreign powers to Netherland territorial waters. (The Loo, Oct. 30, 1909.)

[Translation.]

We, Wilhelmina, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc.;

On the joint proposal of our ministers of marine, of war, for foreign affairs, and of justice, of the 26th April, 1909, the 3d May, 1909, the 18th May, 1909, and the 25th May, 1909;

Having seen the royal decree of the 2d February, 1893, containing provisions respecting the admission of warships of foreign powers into the estuaries, harbors, and inland waters of the State;

Considering that it is desirable to fix new rules of the admission of warships of foreign powers into the Netherlands territorial waters and into the Netherland territorial waters situated within the territorial waters;

Having consulted the council of state (report of the 17th August, 1909);

Having regard to the further report of our ministers of marine, of war, for foreign affairs, and of justice, of the 13th September, 1909, the 6th October, 1909, the 11th October, 1909, and the 15th October, 1909;

Have approved and agreed to stipulate as follows:

ARTICLE 1. The aforesaid royal decree of the 2d February, 1893, shall be withdrawn.

2. (1) Without prejudice to the provisions of article 4, relative to previous permission to enter the estuaries therein mentioned, and relative to the navigation of the inland waters of the State, warships of foreign powers shall be permitted to proceed from the sea into the Netherland territorial waters and the Netherland water territory situated within those territorial waters, provided this takes place in



order to reach by the shortest way and with the observance of the provisions of article 3, the roadstead or harbor situated nearest the sea, in order to anchor there; and provided the number of warships, including those under the same flag already present within the Netherlands jurisdiction, does not exceed three.

3. The provisions of the first paragraph do not prevent the free passage through the territorial waters, so far as this is recognized in international law.

3. (1) When navigating the estuaries and inland waters of the State, warships of foreign powers shall not be permitted to proceed outside the buoyed channels of which use is made by the State pilots on behalf of shipping.

(2) A warship of a foreign power shall only be permitted to find the ship's position and to make soundings as far as is required for safe navigation.

(3) We reserve to ourselves the right to cause the strict observance of this provision to be controlled by causing the ship to be guided by an officer of the royal navy or an official of the pilot service.

4. (1) It shall be prohibited for warships of foreign powers to enter the estuaries mentioned hereafter without the permission of our minister of marine, or to navigate the inland waters of the State without such permission.

(2) The estuaries referred to are those of Terschelling, Texel, Ymuiden, Hook of Holland, Goeree.

(3) By inland waters of the State shall be meant all navigable waters situated within the estuaries of the State.

5. In special cases permission may be granted by us to deviate from the prescriptions of article 2 respecting the number of warships.

6. (1) Warships of foreign powers may not stay within the territory of the State longer than 14 consecutive days.

(2) The same warship may not, after its departure, again enter one of the estuaries of the State within 30 days without the permission of our minister of marine.

7. (1) The restrictive prohibitive provisions of articles 2, 4, and 6 shall not be applicable—

(2) (a) To the warship on board which, according to the standard or the flag flown, there is reigning sovereign, a member of a reigning royal house, the president of a republic, or the head of a legation of a foreign power in the Netherlands, or the head of a mission of a foreign power destined for the Netherlands, or the accompanying warships.

(3) (b) To cruisers for the police supervision by the powers for which the convention of the 6th May, 1892, is in force in the North Sea fisheries.

(4) (c) To warships of foreign powers which are exclusively destined for religious, scientific, or benevolent objects.

(5) (d) To warships of foreign powers in cases of distress, danger from the sea, or casualty. As soon as, in the opinion of the minister of marine, these causes cease to exist, the provisions of articles 2, 4, and 8 shall again enter into operation.

(6) The exceptions to the restrictive prohibitive provisions mentioned in points (a) to (c), inclusive, shall only be applicable toward the powers which observe the same line of conduct toward Netherlands warships.

8. (1) The permission mentioned in article 4 must, so far as it is not obtained through the diplomatic channel, be applied for.

(2) (a) As regards the estuaries:

For the estuaries of Terschelling, through the intermediary of the commissioner of pilots at Terschelling.

For the estuary of Texel or that of Goeree, through the intermediary of the director and commander of the navy at Willemsoord or at Hellevoetsluis, respectively.

For the estuary of Ymuiden or that of the Hook of Holland, through the intermediary of the commander of the warship stationed there, or, failing such a warship, through the intermediary of the commander of the garrison of the fort.

(3) (b) As regards the inland waters:

In estuaries mentioned in article 4, through the intermediary of the authorities mentioned above under (a).

In the other estuaries through the intermediary of the commander of the warship stationed there.

(4) If no warship is stationed there, permission should be applied for through the intermediary of the State harbor master; failing a State harbor master, through the intermediary of the commissioner of pilots; or, if none of these authorities are present, through the intermediary of the burgomaster.

9. A copy of these provisions and a form, to be fixed by our minister of marine, containing a few questions, which form should be filled in to the best of the knowledge (of the commander of the warship), shall be presented by the authorities mentioned in article 8 to the commander of the foreign warship.

10. (1) Within the estuaries and territorial waters of the State, and in general within the limits of the State, warships of foreign powers may not make any hydrographic or terrain observations or carry out any exercises in landing, or, without having obtained the permission of our minister of marine, hold any gun, torpedo, or mine practice.

(2) The crew may not come on shore otherwise than unarmed; this does not apply to officers and underofficers, so far as the sword or the dirk belonging to their uniform is concerned.

(3) The ship's boats may not make any journeys otherwise than unarmed.

(4) If on the occasion of funeral ceremonies on shore, it is desired to deviate from the prohibition contained in the second paragraph of this article permission to do so must first be asked of our minister of marine through the intermediary of the authorities mentioned in article 8.

(5) No sentences of death may be executed within the estuaries and territorial waters of the State on board the warships of foreign powers.

11. Warships of foreign powers shall be bound to respect the existing police, sanitary, and fiscal laws and regulations and to submit to all harbor regulations in so far as the warships of the royal navy are bound to do so.

12. Warships of foreign powers staying within the limits of the State, which transgresses the aforesaid provisions, may be ordered to depart; if necessary they may be compelled by force to do so.

13. (1) If permission to enter has been granted through the diplomatic channel, the State pilots stationed outside the estuaries and ports shall be notified thereof, if possible.

(2) In general these pilots are acquainted with the contents of these provisions and with the existence or nonexistence of opportunity for answering a salute to the Netherlands flag.

(3) So far as necessary they shall communicate the foregoing to the commander of the foreign warship which is to be piloted by them, and they shall further furnish to the said commander such information regarding the foregoing provisions as he shall desire to receive.

14. (1) These provisions shall obtain in time of peace and toward warships of foreign powers who are not belligerent.

(2) We reserve to ourselves the right in time of war, impending war, or maintenance of neutrality, and, further, in all special circumstances, to restrict or to prohibit entirely the admission of warships of foreign powers into the Netherlands territorial waters and into the Netherlands water territory situated within those territorial waters.

(3) Warships of foreign powers which are present in the Netherlands territorial waters or in the Netherlands water territory situated within these territorial waters by virtue of this decree shall in any case be bound to put to sea within six hours or as soon as they shall have received an invitation to that end from or on behalf of our minister of marine.

Our ministers of marine, of war, for foreign affairs, and of justice shall be charged with the execution of this decree, which shall be inserted in the "Staatsblad," and of which a copy shall be sent to the council of state.

The Loo, October 30, 1909.

WILHELMINA.

J. WENTHOLT, *Minister of Marine.*

W. COOL, *Minister of War.*

R. DE MAREES VAN SWINDEREN, *Minister for Foreign Affairs.*

NELISSEN, *Minister of Justice.*

Issued November 26, 1909.

NELISSEN, *Minister of Justice.*

[From Brit. and For. St. Papers, Vol. 102, p. 708-712.]

*Italy.*—Decree of the King of Italy regarding the entry of vessels into fortified harbors and other places in time of war.—Sant' Anna di Valdieri, Aug. 20, 1909.

[Translation.]

Victor Emmanuel III, by the grace of God and the will of the people, King of Italy:

In view of the royal decree of the 21st April, 1895, No. 322, with regard to the approach and sojourn of ships in fortified harbors in time of war;

The opinion of the high naval council having been taken;  
On the proposal of our minister of marine in concert with the minister of war;

We have decreed and do decree:

ARTICLE 1. Whenever a fortified port is to be put on a war footing, the commandant may, if circumstances demand, require vessels, whether of war or of commerce, anchored within the fortified zones, to put out to sea or to move to other berths which it may be convenient to assign to them.

Ships which receive the order to put out to sea are required to withdraw beyond the range of artillery fire within 12 hours from the moment that the order is received on board.

Vessels which are not in a state to sail within the time allotted will be accorded every facility admitted by the requirements of the fortress.

To secure the fulfillment of the order the commandant may resort to all means required by the needs of urgency of the case.

2. It is absolutely forbidden in time of war, by day as by night, that any privately owned craft, or the boats of neutral warships anchored in the waters of a naval fortress, should cruise in these waters without a preliminary and special consent issued by the commandant of the fortress.

National trading vessels and the trading vessels of allied nations, and also neutral warships anchored in a fortified port, may only communicate with the land during the day between sunrise and sunset, and their boats must go by the most direct way to the landing place designated by the authorities.

These same vessels are forbidden to keep boats in the water during the night. However, should an emergency render communication by night necessary, the authorities may furnish a suitable boat on receipt of a request made with the conventional signal previously fixed. Any other signaling is absolutely forbidden.

3. Any vessel which in time of war approaches a naval fortress by day, whether with the intention of asking permission to enter or merely passing within sight of the defenses, must first of all make herself known, and can not proceed toward the anchorage without first obtaining the explicit permission of the commandant of the fortress or that of the commander of the local naval forces acting in his stead.

4. Special very confidential papers containing the rules intended to control recognition of and approach to fortified places will be issued by the ministry (office of the chief of the staff) to vessels of war or national auxiliaries and vessels of allies.

5. In order to make themselves known, national trading vessels and those of the allied nations, and neutral ships of war and trading vessels, must hoist in a conspicuous position their respective national flags and the signal flags indicating their names according to the International Code of Signals.

If they desire to enter the fortified harbor, they must stop at the greatest distance from the port which the possibility of seeing the signals and the range of the semaphore permit (and this must never in

any case be less than 5 miles), and must communicate to the port their request to enter; this consists in hoisting along with their own above-mentioned indication of name either the usual flag for calling the pilot or else the international code signal P. D.: "I ask leave to enter the harbor."

6. The semaphore of the fort, on receiving this signal, communicates it immediately to the authorities, with the addition of such information as the officer in command may think it fit, as, for example, the name, nationality, distance, description, etc.

If the authorities do not think it desirable to permit the vessel to enter the port, they send a reply through the same semaphore by the signal V. S. X.: "I regret I can not accede to your request."

If, on the other hand, they agree, they send the pilot on board to bring the vessel to her anchorage.

An officer may also be sent with the special duty to reconnoiter at close quarters and to visit, and with instructions to grant permission to enter the port or not, according to the result of his investigations.

The authorities in command of the fortified harbor shall provide for special signals by which the officer sent to examine the vessel or the pilot can transmit through the semaphore stations any information which it may be found urgent or necessary to communicate. One of these signals should indicate that the vessel has been visited and another that the pilot has been taken on board; but, above all, provision must be made for a signal, which shall be changed daily and must be hoisted in a conspicuous position, by which it may be conveyed to the semaphore stations and to the defending fleet that the vessel flying it has obtained permission to enter the harbor and is steering to her anchorage.

7. It is for the officer in command to judge whether or not it be opportune to permit the vessels specified in article 5 to enter the port, always provided that their presence does not disturb or hinder the progress or measures of defense; with this object the authorities shall bear in mind—

- (a) That entry into the harbor by night is forbidden.
- (b) That neutral vessels, to whom it is absolutely necessary to enter the port, may be permitted to anchor in a suitably ordained space outside the boom.
- (c) That in case of doubt or in special circumstances they can request instructions from the ministry to which they are responsible.

8. To enforce the observance of the dispositions laid down in the articles of the decree by ships transgressing them, whether inadvertently or willfully, the signals of the international code appropriate to the case shall be hoisted by the semaphore stations, and they shall be emphasized by a blank shot fired from the battery appointed for this purpose. Should this warning not suffice to obtain the execution of the orders after five minutes have elapsed from the first shot, a live shell shall be fired about a hundred meters in front of the vessel's bows; if she still remains refractory, she shall be fired upon.

If the conditions urgently require it, the previous warning by a blank shot may be omitted.

9. The ministry of marine shall draw up and publish a list of the fortified harbors and other places to which the present decree is applicable.

In the list shall be clearly stated in words the anchorages and portions of coast included in the radius of the said fortified harbors and places in question, as well as the semaphore stations, which, in accordance with the dispositions of articles 5, 6, and 8, shall reply to the signals made by the ships.

10. The royal decree of the 21st April, 1895, No. 322, which regulates the entry of ships into fortified harbors in time of war and their stay in them, is abrogated.

We order that the present decree, furnished with the seal of state, be inserted in the official collection of the Laws and Decrees of the Kingdom of Italy, enjoining on whomsoever it may concern to observe it and to cause it to be observed.

Given at Sant' Anna di Valdieri, the 20th August, 1909.

VICTOR EMMANUEL.

MIRABELLO.

SPINGARDI.

[British and Foreign State Papers, vol. 102, pp. 453-455.]

*Russia.*—In 1904 Russia, by special regulations and for military reasons, assumed control over maritime areas off certain commercial and military ports. Among the ports was that of Libau. To the coast waters near this port “at a distance of five miles seaward from the shore” special regulations were extended. These regulations were to be temporary. Their character may best be seen from the published translation:

Temporary regulations for the protection in time of war of certain Russian ports so long as martial law shall not have been proclaimed therein. (Sanctioned by His Majesty the Emperor, Mar. 25 (Apr. 6), 1904.)

As long as martial law shall not have been proclaimed in the ports of Cronstadt, Sveaborg, Libau, Sevastopol, and Batum, and the fortress of Otchakoff, the special measures hereinafter mentioned shall be taken there for the purpose of securing unity of action among the organs of government instituted to insure public safety (arts. 2 and 3) with regard to the formalities to be observed by commercial vessels in entering the protected area.

2. The general control of the measures for the maintenance of security in the harbors, roadsteads, and, generally speaking, all the space occupied by the above-mentioned ports (art. 1), as well as by their establishments and buildings, is intrusted at Cronstadt to the commander in chief of the port at Cronstadt; at Sevastopol, to the commander in chief

of the Black Sea fleet; and at Sveaborg, Libau, Otchakoff, and Batum, to the commandants of these places.

3. The officer in charge of the defense of the port is intrusted with directing and supervising the execution of all the measures of order and security emanating, according to the laws in force, from the military and naval authorities, from the administrative authorities of the port, and from other administrative authorities established in the port.

4. Vessels bound for one of the above-mentioned ports (art. 1) are obliged not to approach it nearer than the radius fixed for each port without having provided themselves in each case with a special permit emanating from the authorities of the port. The latter do not grant this permit until they have examined the proper persons and, in case of necessity, visited the vessel.

5. The areas mentioned in article 4, as well as their limits, are fixed by common accord by the director general of navigation and commercial ports, the minister of war, and the director of the naval ministry, and are made public at the same time as the present regulations. These high officials are also obliged to formulate by common accord the instructions defining the method of making the examination (of persons) and the preliminary visitation (of the vessel), to authorize the approach of the vessel to the port, to designate the administrative officers of the port who are to be delegated for this purpose, and to indicate the coercive measures to be taken by the port authorities.

NOTE.—As regards the port of Sveaborg, the measures enumerated in the present article are taken by common accord by the minister of war and the director of the naval ministry. Complaints of private parties (art. 15) against the dispositions made by the officer in charge of the defense of this port (art. 2) must be presented within one month to the minister of war, who decides on them after an understanding with the director of the naval ministry.

6. Access to the port within a distance less than the radii indicated in article 4 is allowed vessels only from sunrise to sunset. The officer in charge of the defense of the port may, in exceptional cases, prolong this period and authorize certain vessels to enter the port during the night.

7. An administrative officer of the port must be sent out to vessels which are approaching the radius of the port. Upon the arrival of this officer on board the vessel, the captain or the person taking his place, after having received a copy of these regulations, is obliged to deliver to the said officer all the ship's papers and documents relating to the cargo, and, if the officer demands it, to give all the explanations required, to allow the visitation of the vessel in all its parts, and to have opened for this purpose all the holds, coal bunkers, and other parts of the vessel.

8. All communication between the vessel and the coast is prohibited until the preliminary examination, and, if necessary, the visitation of the vessel have been carried out.

9. If, after the examination, and, if necessary, the visitation, the authorities of the port deem it possible to admit the vessel into port, these authorities cause a special flag to be hoisted on the foremast.

10. Every vessel which has been refused access to the port must withdraw therefrom as soon as the order to that effect has been given it.

11. In case the authorities of the port do not deem it possible to allow the unloading of the vessel on the mooring line, this operation must be performed by means of lighters while the vessel is at anchor or moored to a buoy. If the captain or the consignee of the vessel does not consent to submit to this regulation, the vessel is obliged to quit the port.

12. In case vessels do not comply with the provisions of articles 4, 10, and 11, it is the duty of the officer in charge of the defense of the port to compel the vessels in question to submit to these provisions, and even to employ armed force for this purpose, if necessary. The captain of the vessel or his substitute is responsible for the consequences which these measures may involve.

13. If there should be in the ports designated by the present regulations any commercial houses or private persons who are the owners or consignees of vessels, such commercial houses or private persons, as soon as they have been informed that a vessel consigned to them has left a Russian port or any foreign port, must communicate to the port authorities information concerning the port of departure of the said vessel, indicating the date of its departure, the approximate time of its arrival, its name, and its nationality.

NOTE.—The commercial houses and private persons mentioned in the preceding article may, in order to expedite the free passage into port of a vessel consigned to them, communicate to the authorities of the port, besides the information required by article 13, also data concerning the merchandise with which such vessel is laden, the quantity thereof, its place of shipment, its destination, and the nationality of the captain of the said vessel.

14. If the information mentioned in article 13 and the note thereto appended is communicated within the proper time to the administrative authorities of the port, the vessels should be admitted, if possible, into port after a preliminary examination and without being subjected to the visitation mentioned in article 4.

If, however, it is discovered, with regard to any vessel, that the information indicated in article 13, although received in due time by the owners or consignees of the vessels, has not been communicated to the administrative authorities of the port before the arrival of the vessel, the persons who have, without plausible reason, refrained from communicating this information to the proper authority, may be punished by order of the officer in charge of the defense of the port by a fine not exceeding 500 rubles (\$250).

15. Complaints of private parties against the measures taken by the officer in charge of the defense of the port, according to articles 4 to 14 of the present regulations, must be presented within one month to the director general of navigation and commercial ports, except in the cases contemplated by article 5. This high official decides on these complaints after having submitted them to the examination of the committee on port matters, assisted by a representative of the naval ministry.



In case, within the committee, the delegates of the ministries of war and navy are not in accord with the decisions reached by a majority of the members of the committee, the matters in question are transmitted to the proper person according to articles 52 and 53 of the organic statutes of the office of director general of navigation and commercial ports, approved by His Majesty the Emperor on June 10 (22). 1903. (U. S. Foreign Relations 1904, p. 712.)

*Conclusion.*—From discussion of the needs in time of peace and in time of war and from the principles embodied in regulations issued by other States the following regulations may be proposed for the United States:

REGULATIONS RELATING TO FOREIGN VESSELS OF WAR  
IN WATERS UNDER THE JURISDICTION OF THE UNITED  
STATES.

*General.*

1. The term "vessel of war" applies to all vessels under public control for hostile purposes.

*1. In time of peace.*

2. In general, foreign vessels of war need no special authorization to enter American waters, but previous notice of intended arrival should be given through diplomatic channels. Foreign ships of war are, however, excluded from certain American waters.

3. Not more than three foreign vessels of war of the same flag shall at the same time sojourn in any naval district without specific authorization.

4. The sojourn of foreign vessels of war in American waters is limited to 15 days unless a longer period is specifically authorized.

5. Foreign vessels of war must leave American waters within six hours if requested by the authorities, even if the limit of time of their sojourn has not expired.

6. Foreign vessels of war are subject to regulation as to anchorage.

7. Foreign vessels of war must observe the regulations to which American war vessels are subject, except as to customs inspection.

8. The taking of soundings, except as required for immediate safe navigation, the making of surveys, the use of submarine or air craft, target, or similar practice in American jurisdiction are prohibited, though any of these may be specifically authorized.

9. Arms other than the dress arms of officers are not to be worn outside the foreign vessels of war except by special authorization.

10. Disregard of any of the above regulations will be reported to the senior officer present of the foreign war vessels and the vessel or vessels may be requested or may be required to leave American jurisdiction immediately.

11. The above regulations do not apply when a foreign vessel of war is carrying the sovereign or is upon a special diplomatic mission. The arrangements for the treatment of such ships should be made through diplomatic channels.

12. Vessels of war may be granted special privileges in case of vis major.

13. In general, the passage through canals is permitted only after notification by diplomatic channels and after permission is granted.

## *II. When United States is at war.*

14. In time of war any foreign vessel, public or private, even with permission, enters American waters at its own risk.

15. Desire to enter American waters between sunrise and sunset shall be made known by flying the national flag with the signal for pilot, but the vessel must remain outside of American waters till permission to enter is granted.

16. Entrance to American waters during the night is prohibited. Desire to enter American waters between sunset and sunrise shall be made known by such signals as do not admit of mistake, but the vessel must remain outside American waters till permission to enter is granted. The same rule applies in fog or in storm.

17. If permission is granted, the foreign vessels must strictly observe its provisions.

18. Any vessel entering American waters without permission does so at its peril and such force may be used against it as the American authorities deem necessary.

### TOPIC III.

#### BOMBARDMENT BY NAVAL FORCES.

What changes should be made in the Hague convention concerning bombardment by naval forces in time of war?<sup>1</sup>

(a) Should paragraph 2 of article 1 be omitted on the ground that mines constitute a defense?

(b) As almost any vessel may now be converted into a vessel of use in war, how would paragraph 1 of article 2 apply?

(c) What would constitute "military necessity" under paragraph 3 of article 2?

(d) Should article 3 be retained?

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<sup>1</sup> IX. Convention concerning bombardment by naval forces in time of war.

His Majesty the German Emperor, King of Prussia, etc.

[List of Heads of States.]

Animated by the desire to realize the wish expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages;

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application which would safeguard the rights of the inhabitants and assure the preservation of the more important buildings, by applying as far as possible to this operation of war the principles of the Regulation of 1899 respecting the Laws and Customs of Land War;

Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war;

Have resolved to conclude a Convention to this effect, and have, for this purpose, appointed the following as their Plenipotentiaries:—

[Names of Plenipotentiaries.]

Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions:—

#### CHAPTER I.—*The Bombardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings.*

##### ARTICLE I.

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbor.

##### ARTICLE II.

Military works, military or naval establishments, depôts of arms or war matériel, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons

(b) Under the present rules in regard to conversion, the presence in a belligerent port of vessels which are suited for conversion into vessels of war may be a sufficient ground for bombardment unless satisfactory arrangements are made to guarantee that these vessels shall not be used for war purposes.

(c) Military necessity under paragraph 3 of article 2 applies to actions immediately "indispensable for securing the ends of the war, and which are lawful according to modern law and usages of war" and not of a nature "to make the return to peace unnecessarily difficult."

(d) Unless the whole of Convention IX is revised, article 3 in regard to requisitions by naval forces should be retained.

## TOPIC IV.

### SUBMARINE MINES.

The Hague Convention VIII, 1907, relative to the laying of automatic contact submarine mines was admitted to be tentative. In view of this fact should this convention be revised?

(a) Should the use of submarine mines be absolutely prohibited?

(b) If submarine mines are not prohibited, should unanchored automatic contact submarine mines be prohibited?

(c) Should there be a regulation as to the area within which mines may be placed?

(d) What precautions should be taken in laying anchored and unanchored contact mines?

(e) Should a neutral State be forbidden to lay mines within its territorial waters?

(f) Should article 6 be renewed?

(g) Should the use of torpedoes be further regulated?

### CONCLUSION.

(a) The use of submarine mines should not be absolutely prohibited.

(b) The use of unanchored automatic contact mines should be prohibited or more definitely restricted.<sup>1</sup>

(c) The area within which mines may be placed should be determined by regulation.

(d) When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping, including—

1. An advance notice to foreign Governments and to mariners, specifying the general limits of the mined area.

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<sup>1</sup> Using the phraseology of the Hague convention and introducing the proposed changes, the following form may be suggested as meeting present requirements and opinions: It is forbidden to lay unanchored automatic contact mines except when they are so constructed as to become harmless one-half hour after those who laid them have lost control over them, and in every case before passing outside the area of belligerent activities.

2. Provision for warning peaceful vessels approaching the mined area.

3. Specification of the time during which the mines will be dangerous.

(e) The laying of mines by a neutral State should not be prohibited.

(f) Article 6 of Convention VIII should not be continued in force.

(g) The use of torpedoes should not be further but should be less regulated if any change is made in the convention.

#### NOTES.

*Mines in the Russo-Japanese War, 1904-5.*—The use of submarine mines in the Russo-Japanese War of 1904-5 particularly attracted the attention of the world to dangers of the use of these instruments of war. Mines had been used before this time, but not in such a general manner. Whether or not mines were deliberately allowed to drift out to sea, it seems probable that a large number of mines did drift about in the waters in the neighborhood of Port Arthur. The reports seem to show that many mines were found outside the immediate area of the belligerent activities. As the danger from drifting contact mines might be equally great to the party placing the mines, it is difficult to believe that mines which would not become harmless after a fixed time would be set adrift in an area of general operations, even if there were no regulation against the use of submarine mines.

The destruction of the Japanese battleship *Hatsuse* on May 15, 1904, was reported by Admiral Togo, as follows:

While the fleet was watching the enemy off Port Arthur, the *Hatsuse* struck an enemy's mine. Her rudder was damaged, and she sent a message for a ship to tow her. One was being sent, when another message brought the lamentable report that the *Hatsuse* had struck another mine and had sunk immediately after. She was then 10 knots off the Liau-tie-Shan promontory. There was no enemy in sight, and her loss must have been caused by a mine or submarine.

Later it was declared that the *Hatsuse* was sunk by a submarine mine. The destruction of the *Hatsuse* by a mine at a point 10 miles from Port Arthur caused much discussion. It was admitted that belligerents had a right

to carry on war on the high sea, but it was also contended that neutrals had a right to safe passage on the high sea when not within the area of actual active hostilities. It was contended that if a neutral vessel had passed over the same spot it would have been destroyed as was the *Hatsuse*. Later, in 1907, the Chinese delegate at the Conference at The Hague explained that many Chinese vessels had been destroyed by mines drifting about the sea, some even entering the littoral sea. The Chinese delegate reckoned the number of Chinese who had lost their lives as 500 to 600.

It was reported that the Russian vessel *Yenissei*, after laying 389 mines, was itself destroyed by the 390th. The Russian vessel *Petropavlovsk* seems to have been destroyed by a mine when near Port Arthur. It is of course impossible to determine whether these vessels were destroyed by mines laid by Russian or by Japanese forces.

During the Russo-Japanese War the area in which mine laying was carried on was remote from the usual routes of commerce. The possible effects of contact mines drifting about the English Channel as in the neighborhood of Port Arthur was pictured effectively by some writers, and attention was called to the dangers from such forms of warfare and the necessity of regulation of the use of submarine mines became evident.

*Propositions at The Hague in 1907.*—The British delegation at the Hague conference in 1907, following its instructions, offered the following proposition, which became the basis of much discussion:

ARTICLE 1. L'emploi de mines sous-marines automatiques de contact non mouillées est interdit.

ART. 2. Les mines sous-marines automatiques de contact, qui, en quittant leur point de mouillage, ne deviennent pas inoffensives, sont prohibées.

ART. 3. L'emploi des mines sous-marines automatiques de contact pour établir ou maintenir un blocus de commerce est interdit.

ART. 4. Les belligérants ne pourront se servir de mines sous-marines automatiques de contact que dans leurs eaux territoriales ou celles de leurs ennemis. Toutefois, devant les ports de guerre fortifiés cette zone pourra être étendue jusqu'à une distance de dix milles des canons à terre, à charge, pour le belligérant qui poserait ces mines, d'en donner

avis aux neutres, et de prendre en outre les dispositions que les circonstances lui permettront pour éviter, dans la mesure possible, que les navires de commerce qui n'auraient pu être touchés par cet avis soient exposés à être détruits.

Seuls les ports possédant au moins un grand bassin à radoub et qui seront munis d'outillage nécessaire à la construction et la réparation de vaisseaux de guerre et dans lesquels un personnel d'ouvriers payés par l'État pour effectuer la construction et la réparation de vaisseaux de guerre est entretenu en temps de paix, seront considérés comme entrant dans la catégorie de ports de guerre.

ART. 5. D'une façon générale, les précautions nécessaires seront prises pour sauvegarder les navires neutres qui se livrent à un commerce licite; et il est à désirer que, en raison des dispositions mêmes prises dans la construction des mines sous-marines automatiques de contact, ces engins cessent d'être dangereux au bout d'un délai convenable.

ART. 6. A la fin de la guerre les belligérants se communiqueront mutuellement dans la mesure possible les informations nécessaires quant à l'emplacement des mines automatiques de contact que chacun aura posées le long des côtes de l'autre, et chaque belligérant devra procéder dans le plus bref délai à l'enlèvement des mines qui se trouvent dans ces eaux territoriales. (Deuxième Conférence Internationale de la Paix, Tome III, p. 660.)

Italy proposed to limit the life of unanchored automatic contact submarine mines to one hour after they were launched and to permit the use of such anchored contact mines only as should become harmless on breaking adrift.

Japan would limit the use of unanchored mines to the immediate sphere of hostilities and make the life by construction such as to offer no danger to neutrals.

The Netherlands delegation introduced certain amendments looking particularly to the use of mines for purposes of defense by neutrals.

Brazil offered an amendment of somewhat similar purport.

Spain also made a proposition to limit the mines to territorial waters.

Germany suggested the addition of the following clause:

La pose des mines automatiques de contact sera aussi permise sur le théâtre de la guerre; sera considéré comme théâtre de la guerre l'espace de mer sur lequel se fait ou vient de se faire une opération de guerre ou sur lequel une pareille opération pourra avoir lieu par suite de la présence ou de l'approche des forces armées des deux belligérants. (Ibid, p. 663.)



The United States delegation offered an amendment as follows:

1. Unanchored automatic contact mines are prohibited.
2. Anchored automatic contact mines, which do not become innocuous on getting adrift, are prohibited.
3. If anchored automatic contact mines are used within belligerent jurisdiction or within the area of immediate belligerent activities, due precautions shall be taken for the safety of neutrals. (*Ibid.*, p. 664.)

Russia added the provision in regard to torpedoes and approved form of mines:

1. Les belligérants se serviront de mines automatiques de contact sous-marines amarrées construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives, lorsqu'elles auront rompu leurs amarres.
2. Leur mines flottantes automatiques seront construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives après un certain délai après leur lancement.
3. Les torpilles seront construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives lorsqu'elles auront manqué leur but.
4. Un délai suffisant sera accordé aux Gouvernements pour mettre en usage les appareils de mines perfectionnés. (*Ibid.*, p. 664.)

A synoptical arrangement of all the propositions was made and then various amendments were suggested to the new arrangement.

Several suggestions were made with view to allowing mines within the area of immediate belligerent operations or with view to making a definite limit from the coast for the employment of mines. Ten miles was frequently suggested.

The propositions in general show a drift from the idea entertained by many at the commencement of the discussion, which idea was favorable to absolute prohibition of the use of mines.

M. Hagerup, the presiding officer of the subcommittee, summarized the propositions before the committee in the following manner:

Les questions dont nous aurons à nous occuper sont les suivantes:

*Première question.*—Certaines espèces de mines ne doivent-elles pas être l'objet d'une interdiction absolue, qu'elles soient placées dans des eaux territoriales ou en pleine mer?

La proposition britannique interdit:

(a) Les mines sous-marines automatiques de contact non amarrées; les amendements italiens et japonais (annexes 10 et 11) font exception pour les mines qui deviennent inoffensives un certain temps après leur immersion. L'amendement italien fixe ce temps à une heure, tandis que l'amendement japonais n'indique pas de fixation.

(b) Sont en outre interdites, d'après la proposition britannique, les mines qui en quittant leur point de mouillage ne deviennent pas inoffensives. La même interdiction est, dans d'autres termes, contenue dans l'amendement italien et l'amendement espagnol. (Annexes 10 et 14.) La différence entre ce dernier amendement et les dispositifs sus-mentionnés est que l'amendement espagnol présuppose une espèce d'autorisation internationale pour le placement de mines automatiques de contact.

*Seconde question.*—Le placement de mines sous-marines ne doit-il pas être interdit en pleine mer?

La proposition anglaise, article 4, répond affirmativement, sous cette réserve qu'elle autorise la pose de mines en mer jusqu'à dix milles devant certains ports de guerre. La proposition contient en outre une définition de ce qu'on entend par port de guerre. L'amendement de la Délégation des Pays-Bas propose de supprimer cette définition.

*Troisième question.*—Dans quelles conditions les États peuvent-ils placer des mines dans leurs eaux territoriales?

Cette question n'est traitée par la proposition britannique qu'en tant qu'elle concerne les belligérants, tandis que les amendements, proposés par les Délégations des Pays-Bas et du Brésil, visent aussi les neutres. La proposition britannique dans ses articles 4-6 prescrit d'une façon générale des précautions à prendre pour sauvegarder la navigation pacifique contre les dangers des mines. Sur ce point, il y a cette différence entre la proposition britannique et l'amendement néerlandais que la première demande aux belligérants de donner aux neutres un avis spécial du placement des mines, tandis que l'amendement néerlandais se contente d'une publication générale. La proposition de la Délégation de Pays-Bas qui traite également des neutres contient d'ailleurs les mêmes prescriptions pour le placement des mines par les neutres et par les belligérants. Il est en outre à remarquer que cette proposition soumet tout placement de mines, soit par les belligérants, soit par les neutres, à la restriction que les détroits qui unissent deux mers libres ne peuvent pas être barrés. Pour le reste des dispositions proposées par les différentes délégations, il convient d'envisager séparément les différentes hypothèses suivantes:

(a) Placement de mines par un belligérant dans ses propres eaux territoriales.

(b) Placement de mines par un belligérant dans les eaux de l'adversaire. L'amendement espagnol (annexe 14) le soumet à la condition que le belligérant y exerce un pouvoir effectif. La proposition britannique (article 3) prescrit de son côté que l'emploi de mines pour établir ou maintenir un blocus est interdit.

(c) Placement de mines dans les eaux territoriales des neutres. L'amendement néerlandais assimile ce cas complètement au placement de mines par les belligérants, tandis que l'amendement brésilien (annexe 13) ne paraît admettre pour les neutres que le placement de mines explosant sous l'action d'une impulsion provoquée en connaissance de cause par des autorités d'État. Cet amendement contient du reste des prescriptions spéciales quant à l'avertissement à faire et la responsabilité pour le déplacement des mines.

La quatrième question est celle visée par l'article 7 de l'amendement néerlandais (annexe 12). Y a-t-il lieu d'établir par une convention internationale des règles pour l'indemnité en cas de dommage causé par les mines? (Ibid., p. 522.)

*Preamble of the Hague convention.*—The preamble of the Hague convention relative to the laying of automatic contact submarine mines shows that those who drew the convention did not regard its provisions as anything more than tentative. The form of the preamble is distinctly favorable to much more rigid regulations than those embodied in the convention itself. The preamble states that the powers:

Inspired by the principle of the freedom of sea routes, the common highway of all nations; seeing that, although in the existing state of affairs it is impossible to forbid the employment of automatic contact submarine mines, it is nevertheless desirable to restrict and regulate their employment in order to mitigate the severity of war and to ensure, as far as possible, to peaceful navigation the security to which it is entitled, despite the existence of war; until such time as it is found possible to formulate rules on the subject which shall ensure to the interests involved all the guaranties desirable; have resolved to conclude a convention for this purpose, and have appointed the following as their plenipotentiaries.

*Tentative character of the convention.*—Not only does the preamble of the convention itself and many of the discussions show that the convention relative to the laying of automatic contact submarine mines is tentative in character, but some of the reserves made by States and the declaration of Great Britain show this. (Deuxième Conférence Internationale de la Paix, tome 1, page 281.)

*Types of mines.*—Mines are generally classified as anchored and unanchored or free. Anchored mines vary in construction and operation, but usually are such as are under control so that they may be discharged at the will of an operator on shore, or such as explode on contact with a vessel or other hard body. Unanchored mines also

vary in construction and operation. Some have a reasonably definite limit of effectivity, after which they sink or otherwise become harmless. Some unanchored mines seem to be effective for long periods.

*Controlled anchored mines.*—Naturally there has been little objection to the use of controlled anchored mines. An anchored mine which can only be discharged at the will of an operator may differ little from a shell from a gun. The shell may be aimed to strike the vessel, while the mine may be placed so that it will be struck by a vessel, but will explode only when the operator in charge determines and at other times will be harmless. Such mines do not necessarily imperil neutral or innocent shipping. As these mines are under control of the operator, it is generally held that the State placing such mines is responsible for their use. The use of such mines has not met with much opposition, but has been generally approved.

*Anchored contact mines.*—Anchored contact mines being such as explode on contact with a vessel, may be dangerous to any vessel, whether the vessel be hostile, neutral, or of the nationality placing the mines. From the time when these mines are placed, the force placing them has no control over them except the negative control due to the knowledge of their supposed location. Currents may change according to circumstances the location of the mines. The storms and tides of some regions make it difficult to maintain the position of mines. These mines also sometimes drift from their moorings. In storm, fog, or stress of weather such mines may be particularly dangerous, because the usual precautionary measures may be impossible, and vessels may enter a mine field inadvertently. When once adrift, a contact mine may remain a menace to shipping unless so constructed as to become harmless on breaking adrift.

It is open to question whether anchored contact mines are not so dangerous as to involve undue risk to all parties who use the sea.

There is a general agreement upon the requirement that anchored contact mines should become harmless on getting adrift.

*British instructions, 1907.*—The delegates of Great Britain were acting in accordance with their instructions in advocating the entire abolition of the use of automatic contact mines. These instructions were as follows:

His Majesty's Government would view with satisfaction the abandonment of the employment of automatic mines in naval warfare altogether. Failing the acceptance of such a total prohibition, they earnestly hope that the employment of these engines of war will only be sanctioned under the strictest limitations. They would advocate an arrangement by which the use of automatic mines should be limited to territorial waters, and, if possible, to such portions of territorial waters as adjoin naval bases or fortified ports. All mines thus employed should be effectively anchored, and so constructed that, in the event of their breaking adrift, they would either automatically become harmless or sink, and that in any case their active life should not exceed a limited period of, say, six months. (Correspondence Respecting the Second Peace Conference, Parliamentary Papers Misc. No. 1 (1908) (Cd., 3857).)

*Discussion at The Hague, 1907.*—The discussion of the subject of submarine mines at The Hague in 1907 showed that the conference considered it too early to give any definite pronouncement upon the matter. The report of the committee frankly admits this. The votes in the subcommittees were sometimes quite evenly divided.

Several States maintained that the use of mines should not be prohibited not merely because mines would be needed in time of war, but also because they would be used to protect neutrality. The Brazilian delegate supported this position.

The Netherlands delegate objected to the British proposal on the ground that it lacked any provision relating to the laying of mines during a war by neutral powers in their territorial waters in order to maintain their neutrality. (*Deuxième Conférence Internationale de la Paix, Tome III, p. 521.*) Other States ordinarily neutral also supported the proposition to allow the use of submarine mines.

The general argument was that belligerents were not yet prepared to renounce the use of a means of offensive and defensive warfare which was regarded as formidable and at the same time less costly than many other means. The States with smaller navies were particularly averse to the prohibition of mines. The general sentiment was

favorable to regulation but not to prohibition of the use of mines. Germany maintained a position less favorable to regulation than most States. Great Britain led the movement for restriction. At the time of the adoption of the convention relating to mines Sir Ernest Satow made a formal statement on behalf of the British delegation, of which a translation appeared in the London Times of October, 1907:

Having voted for the mines convention which the conference has just accepted, the British delegation desires to declare that it can not regard this arrangement as furnishing a final solution of the question, but only as marking a stage in international legislation on the subject. It does not consider that adequate account has been taken in the convention of the rights of neutrals to protection or of humanitarian sentiments which can not be neglected. The British delegation has done its best to bring the conference to share its views, but its efforts in this direction have remained without result. The high seas, gentlemen, form a great international highway. If in the present state of international laws and customs belligerents are permitted to fight out their quarrels upon the high seas, it is none the less incumbent upon them to do nothing which might, long after their departure from a particular place, render this highway dangerous for neutrals who are equally entitled to use it. We declare without hesitation that the right of the neutral to security of navigation on the high seas ought to come before the transitory right of the belligerent to employ these seas as the scene of the operations of war.

Nevertheless, the convention as adopted imposes upon the belligerent no restriction as to the placing of anchored mines, which consequently may be laid wherever the belligerent chooses, in his own waters for self-defense, in the waters of the enemy as a means of attack, or finally on the high seas, so that neutral navigation will inevitably run great risks in time of naval war and may be exposed to many a disaster. We have already on several occasions insisted upon the danger of a situation of this kind. We have endeavored to show what would be the effect produced by the loss of a great liner belonging to a neutral power. We did not fail to bring forward every argument in favor of limiting the field of action for these mines, while we called very special attention to the advantages which the civilized world would gain from this restriction, since it would be equivalent to diminishing to a certain extent the causes of warlike conflicts. It appeared to us that by acceptance of the proposal made by us at the beginning of the discussion dangers would have been obviated which in every maritime war of the future will threaten to disturb friendly relations between neutrals and belligerents. But since the conference has not shared our views it remains for us to declare in the most formal manner that these dangers exist, and that the certainty that they will make themselves felt in the future is due to the incomplete character of the present convention.

As this convention, in our opinion, constitutes only a partial and inadequate solution of the problem, it can not, as has already been pointed out, be regarded as a complete exposition of international law on this subject. Accordingly, it will not be permissible to presume the legitimacy of an action for the mere reason that this convention has not prohibited it. This is a principle which we desired to affirm, and which it will be impossible for any State to ignore, whatever its power. (See Deuxième Conférence Internationale de la Paix, Tome I, p. 281.)

There also appeared in the Times a translation of the declaration of Baron Marschall von Bieberstein, of the German delegation, made immediately after the English statement, as follows:

That a belligerent who lays mines assumes a very heavy responsibility toward neutrals and toward peaceful shipping is a point on which we are all agreed. No one will resort to this instrument of warfare unless for military reasons of an absolutely urgent character. But military acts are not solely governed by stipulations of international law. There are other factors. Conscience, good sense, and the sense of duty imposed by principles of humanity will be the surest guides for the conduct of sailors, and will constitute the most effective guaranty against abuses. The officers of the German Navy, I loudly proclaim it (*je le dis à haute voix*), will always fulfill in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization. I have no need to tell you that I entirely recognize the importance of the codification of rules to be followed in war. But it would be a great mistake to issue rules the strict observation of which might be rendered impossible by the law of facts. It is of the first importance that the international maritime law which we desire to create should only contain clauses the execution of which is possible from a military point of view—is possible even in exceptional circumstances. Otherwise the respect for law would be lessened and its authority undermined. It would also seem to us to be preferable to maintain at present a certain reserve, in the expectation that seven years hence it will be easier to find a solution which will be acceptable to the whole world. As to the humanitarian sentiments of which the British delegate has spoken, I can not admit that there is any country in the world which is superior to my country or my Government in the sentiment of humanity. (*Ibid.*)

With such diversity of opinion among large States the prohibition of mines is not immediately possible.

The action of States since the Hague Conference of 1907 has shown that mines were not to be immediately set aside as engines of war. Opinion and usage, therefore, seem at present unfavorable to the entire prohibition of the use of submarine mines.

*Opinion of Dupuis.*—After speaking of the discussion at The Hague in 1907, Prof. Charles Dupuis, writing in 1911, says:

Il semble que ces constatations devraient suffire pour faire condamner, même en dehors de tout accord conventionnel, l'usage d'engins aussi dangereux pour la navigation pacifique que pour les vaisseaux de guerre belligérants. Parce que la haute mer n'est soumise à aucune souveraineté, il est loisible aux belligérants de s'y battre; il est admis que les bâtiments neutres qui se risquent sur le théâtre des opérations le font à leurs risques et périls; ces bâtiments pourraient se tenir à l'écart ou fuir à l'approche des navires de combat; s'ils ne le font pas, ils s'exposent sciemment à un danger qu'ils pourraient éviter; ils ne peuvent se plaindre des effets de leur propre imprudence. Mais si, de ce que la mer n'est à personne, il résulte que les belligérants ont liberté de s'y battre, il résulte aussi que les neutres, que les pacifiques ont liberté de s'y mouvoir et droit d'user de cette liberté sans courir des périls qu'ils ne peuvent ni prévoir, ni éviter. Il est possible de prévoir et d'éviter le théâtre d'un combat; il est impossible de prévoir et d'éviter les mines invisibles qui flottent à la dérive, à des distances incalculables des opérations de guerre, et qui conservent leur puissance de destruction pendant des mois et des années après le jour où elles ont été immergées. Il est donc inadmissible que les belligérants menacent et détruisent la liberté de la mer, en semant des engins aveugles et inévitables, qui portent au loin, pour un temps illimité, contre tous les navires, les périls qu'ils n'ont le droit de susciter que contre leurs seuls ennemis.

On pourrait, sans doute, admettre que les eaux territoriales des belligérants fussent, pendant la guerre, rendues inaccessibles par des mines, à la condition que les neutres, prévenus du danger, aient la faculté de s'y soustraire, mais encore faudrait-il que les mines immergées dans les eaux territoriales fussent mises dans l'impossibilité d'aller, en pleine mer, repandre le péril qu'elles ne doivent créer que dans la zone soumise à la juridiction des États riverains. (*Le Droit de la Guerre Maritime*, No. 332, p. 547.)

As a general principle, mines may be used when under control or within an area under the exclusive control of the belligerent within which peaceful shipping may not enter. Therefore, mines may be used within the area of and during actual belligerent action, as peaceful shipping is excluded from this area or enters it at the risk of injury.

*Conclusion.*—The use of submarine mines should not be absolutely prohibited.

*Unanchored mines.*—The Russo-Japanese War of 1904-5 caused many complaints upon the use of mines. The Chinese contended that their nationals had been sacrificed by the careless use of mines by the bellig-



erents. It was maintained that the seas had been strewn with floating mines. Whether there was any justification for this supposition may be doubted and the injury to innocent vessels may have been caused altogether by mines which had broken adrift from their moorings. If this was the case, these mines were evidently not so constructed as to become harmless when getting free of their moorings, for they became in effect floating contact mines which were carried by the currents in many directions.

The mine being in any case a particularly dangerous engine because hidden, becomes even more dangerous when floating freely, the knowledge of its location being unknown and its effective life indefinite in duration. The unrestrained use of unanchored mines is therefore generally condemned as securing to the belligerent no advantage commensurate with the risk involved.

The question then arises as to the use of unanchored contact mines for special purposes. A vessel may be pursued by another. It may fire a shell or discharge a torpedo at the pursuing vessel. May it not then drop a mine in the path of the pursuer? Evidently the principle is nearly the same as to the different measures so far as concerns the two belligerents. The shell will if it misses its mark sink to the bottom of the sea and may become immediately harmless. The torpedo will also usually become harmless when it has completed its relatively short run. The essential difference in the mine is that unless specially constructed it may remain a danger to any vessel for an indefinite period. The Naval War College in 1905 therefore proposed the following:

Unanchored contact mines are prohibited, except those that by construction are rendered innocuous after a limited time, certainly before passing outside the area of immediate belligerent operations. (International Law Topics, 1905, p. 147.)

The Hague Conference of 1907 adopted a somewhat different formula, making the time of effectivity definite, saying it is forbidden—

to lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them.

It may be observed that this fixing of one hour as the time of active life of an unanchored automatic contact mine may permit the mine to pass entirely outside the area of immediate operations. If the operations should be in or near an ocean highway of commerce, the period of one hour as the life of an unanchored mine might be long enough to place many neutral vessels in danger. The belligerent vessel which had thrown over the mine at the beginning of the hour might be many miles distant before the end of the hour, and if a vessel or fleet were pursuing the same might be true of the pursuers.

From the drafting of the present rule also there is no reason why unanchored automatic contact mines might not be used even when the object might not be to escape pursuit, but to endanger an enemy who was expected later to pass through the area. The only restriction is that the mine shall become harmless after one hour at most, otherwise there is no formal limitation, even the requirement (art. 3) that "every possible precaution must be taken for the security of peaceful shipping" is applied specifically to "anchored automatic contact mines." The Hague regulation in regard to unanchored mines is manifestly unsatisfactory, and if unanchored mines are not altogether prohibited this clause should be revised.

*Attitude of United States at The Hague, 1907.*—The United States at The Hague in 1907 proposed the prohibition of unanchored mines. The course of discussion is shown in the report of the committee:

Pourtant, la proposition d'une interdiction absolue de toute mine automatique de contact non amarrée fut reprise par la Délégation des Etats-Unis d'Amérique (annexe 17). Elle ne put rallier la majorité des voix dans le comité d'examen, qui la rejeta par 11 voix contre 4 et 2 abstentions et se prononça ensuite unanimement en faveur de la limitation, dans le sens sus-indiqué, du temps pendant lequel la mine non amarrée serait dangereuse. Mais, bien que d'accord sur ce dernier principe, les membres du comité n'étaient pas unanimes à vouloir aussi fixer d'une manière déterminée le laps de temps dans lequel les mines non-amarrées devraient devenir inoffensives. On a soutenu qu'il y a des cas où une limitation fixée d'avance est impossible; on devrait se contenter d'une formule plus générale qui statuerait, sans fixer un laps de temps "que les mines automatiques de contact non amarrées doivent devenir inoffensives après un temps limité de manière à n'offrir aucun danger aux navires neutres." "Si une force navale," a dit le Contre-

Amiral Siegel, "se voit poursuivie et veut lancer des mines non amarées pour empêcher son adversaire de l'atteindre, une limite déterminée, avant tout la limite d'une heure, rendrait l'emploi de cette arme très souvent inefficace et inutile, étant donné que celui qui poursuit sera en mesure, soit par ses éclaireurs, soit par d'autres moyens, de connaître que son adversaire a jeté des mines; ce dernier trouverait donc des moyens pour éviter tout danger, soit en faisant un petit détour, soit en attendant une heure avant de passer sur le lieu dangereux, après quoi il sera en toute sécurité. Un autre cas se présente, si un ennemi bloque l'embouchure d'un fleuve. Si le défenseur veut employer des mines flottantes contre son ennemi en les envoyant en aval, le temps de leur efficacité doit être en rapport avec la longueur du chemin à parcourir et ne peut pas être fixé d'avance."

Malgré ces considérations, la majorité du comité, désirant assurer une efficacité réelle au principe adopté, se prononça en faveur d'une limite de temps fixée d'avance (9 voix contre 2 et 5 abstentions), après quoi le comité, appelé à choisir entre la limite d'une heure et celle de deux heures (la dernière proposée à titre transactionnel par S. Exc. M. de Hammarskjöld) se prononça en faveur de la limite d'une heure, à la majorité de 8 voix, contre 1 et 7 abstentions." (Deuxième Conférence Internationale de la Paix, Tome III, p. 403.)

*Precautions as to unanchored mines.*—If mines are to be used they are evidently engines of such nature as should be used with some care that they do no injury to parties not concerned in the war.

An innocent private vessel of the enemy may not be sunk unless under "exceptional necessity," and those on board must be placed in safety before the destruction of the vessel, though when such a vessel deliberately comes within range in time of actual battle, it must take the consequences. The existence of an actual battle is a fact evident to the vessel.

This condition is somewhat parallel to that of a floating unanchored mine thrown over by one belligerent vessel while another is pursuing. It would seem that to make the situation more nearly parallel the range of the mine should be that of a shell or of a torpedo or the actual limit of immediate operations. At the present time it is probable that the guns of any ship of war have not a range greater than the distance which could be made by a fast vessel in one-half hour. One hour would therefore seem a long life to allow to unanchored contact mines, because if not exploded they might continue for a half hour to be a danger to innocent shipping which might presume

the sea to be safe after the pursued and pursuer had passed. If a long life is allowed to unanchored mines there is the correspondingly increased risk that these mines may drift in unexpected directions and to a greater distance from the point of launching. If allowed a life of one hour the vessel may be before the end of the hour beyond the distance within which an approaching neutral or other innocent vessel can be notified of the danger from the mine.

The use of uncontrolled, unanchored contact mines should be prohibited. The reasons for prohibiting unanchored, uncontrolled mines are many. Among the reasons would be the extreme danger to all who follow the sea as compared with the slight chance that the enemy against whom the mine is launched will be injured. These mines should be clearly distinguished from the controlled, unanchored contact mines, the range of action of which is determined by the belligerent who launched the mine.

A belligerent at the present time has no right to complain of the use of mines against his vessels of war. It is true that the mine is a hidden means of attack, but the submarine boat may also be a hidden means of attack, and there is no prohibition of the use of hidden or secret measures provided no perfidy is involved. The innocent vessels of the enemy are generally exempt from attack though they may be taken as prize. Small coast fishing vessels and small boats engaged in local trade are, when innocently employed, by convention, exempt from capture even. The obligation of the belligerent to guard such vessels against injury from mines would therefore be as imperative as to guard them against injury from cannon fire. The only way in which this can be done is by control of the life of the mine.

As a life of one hour seems an unduly long time for an uncontrolled, unanchored mine and involves undue risks, it would seem best to further limit the maximum time, and as in many cases the maximum time should not be granted, there should be another basis for determination of the life depending upon the area of immediate hostilities. A combination of these would seem to give the

necessary and reasonable guaranty for safety of innocent vessels, particularly when an engagement might take place in the neighborhood of the highways of maritime commerce, as may be the case. The proposition of the Naval War College in 1905 was that—

Unanchored, contact mines are prohibited except those that by construction are rendered innocuous after a limited time, certainly before passing outside the area of immediate belligerent activities.

The Hague convention of 1907 provided that it is forbidden—

to lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after those who laid them have lost control of them.

It may be advantageous to combine these propositions, as the single limit of time proposed at The Hague does not seem to be sufficient. The War College proposition of 1905 contained a reference to time which was not made specific. There would probably be a little objection to making the time limit specific provided it were not too long. One hour seems too long. One-half hour seems ample from a belligerent point of view, and from the neutral point of view the shorter the time the more satisfactory, because the risk would be correspondingly lessened.

*Conclusion.*—The use of unanchored automatic contact mines should be prohibited or more definitely restricted. Using the phraseology of the Hague convention and introducing the proposed changes, the following form may be suggested as meeting present requirements and opinions:

It is forbidden to lay unanchored automatic contact mines except when they are so constructed as to become harmless one-half hour after those who laid them have lost control over them, and in every case before passing outside the area of belligerent activities.

*General statement as to area.*—It is generally admitted that one belligerent must at all times when outside of neutral jurisdiction be on guard against attack which may legitimately be made by the other belligerent. This attack may be made upon the high seas or within belligerent waters. The attack may be sudden under cover of night, of fog, or of ruse not involving perfidy.

When a neutral vessel enters the area of actual legitimate hostilities the vessel enters at its own risk. If the opposing belligerents are engaged in firing upon each other a neutral vessel comes within range at its peril. Certain areas in the neighborhood of fortifications or other points of military importance are sometimes set apart as strategic areas and vessels are notified or warned not to enter. Such action has been generally approved. Blockaded areas are universally recognized as closed to free communication. Blockaded and strategic areas are examples of areas from which the innocent vessel is warned by public proclamation or notification. The liability of the neutral is based upon his action when knowledge of conditions based on proclamation or notification may be presumed. In case of an actual battle, knowledge is presumed because of the evident facts. It is proper that a neutral should bear the consequences of disregard of knowledge which he reasonably may be presumed to have.

The risk from mines is or may be such as can not be presumed to be known to the innocent vessel. In case of bombardment the commander of the attacking force is under obligation to do his utmost to warn the authorities. Other provisions are in the direction of safeguarding not only neutrals but also noncombatants. Many regulations are aimed to safeguard those not engaged in warfare from hidden dangers.

The right of innocent use of the high sea has long been recognized as paramount to any right of a belligerent to exclude innocent vessels from a given area, except for immediate military reasons. Even a blockade to be binding must be effective. It is, of course, possible that a battle may be waged in any part of the high sea; this contingency does not, however, give a belligerent the right to exclude innocent shipping from any area in which he is not actually operating or maintaining a force.

A belligerent has the right to place mines in certain areas for military purposes. These military purposes are supposed to be immediate and not remote or contingent. The propriety of placing of mines for the defense of a military port is widely admitted, though there is difference of opinion upon the distance from the

port at which mines may be laid. The laying of mines in the high sea is not admitted by all to be allowable, but all demand proper precautions for innocent parties.

The discussion as to mines in the high-sea areas shows less accord in reference to unanchored contact mines than in reference to anchored mines.

Speaking of the mines in the seas of the Far East, during the Russo-Japanese war (whether they might have been anchored and have broken loose, or whether they might have been unanchored, the results would have been the same), Prof. Westlake said:

Now, the right of a State in the waters subject to its sovereignty can certainly not rank higher than that of a private owner in the land or water which is his property. Still less, if possible, can the right of a State in the open sea, which is free to the use of all, rank higher than that of property. But no principle is more firmly established in the science of law than that which says to an owner *sic utere tuo ut alienum non laedas*. The right of sovereignty, therefore, does not extend to employing anywhere what may be foreseen to be engines of slaughter and damage to unoffending foreigners. The foreign government whose subjects suffer from such engines does not need to inquire whether their use is prohibited by any positive rule of international law, whether resting on recognized custom or an agreement. They are indefensible in themselves, and the foreign government concerned will be justified not only in taking up the cause of its injured subjects. It will not have exceeded its rights if it interferes in order to stop the offending methods of war. (International Law, Part II, War, p. 322.)

The contention of Prof. Westlake that the right of sovereignty does not extend to unregulated employment of mines is so generally supported at the present time as to scarcely need discussion. It may therefore be stated in a general way that mines may not be used except within certain defined areas. What these areas shall be is, however, a question upon which there still exists differences of opinion.

*Propositions as to area, The Hague, 1907.*—The British proposition at the Second Hague Conference, 1907, in article 4 limited the use of automatic contact submarine mines to the territorial waters of the belligerents and to an area extending 10 miles from fortified places or military ports.

The Netherlands delegation would also prevent the mining of straits which unite open seas. (*Deuxième Conférence Internationale de la Paix, Tome III, p. 661.*)

The Spanish delegation wished to limit the placing of mines by one belligerent in the territorial waters of the other belligerent to the area over which the belligerent placing the mines was in effective control.

Germany added an important suggestion:

La pose des mines automatiques de contact sera aussi permise sur le théâtre de la guerre; sera considéré comme théâtre de la guerre l'espace de mer sur lequel se fait ou vient de se faire une opération de guerre ou sur lequel une pareille opération pourra avoir lieu par suite de la présence ou de l'approche des forces armées des deux belligérants (Ibid., p. 663.)

Later a somewhat modified suggestion was made by the German delegation:

La pose des mines automatiques de contact amarrées sera aussi permise dans l'emplacement de l'activité immédiate des belligérants, pourvu que les précautions soient prises pour la sûreté à laquelle les neutres ont droit. (Ibid., p. 668.)

A somewhat similar amendment was offered by the Netherlands delegation.

The various propositions were put in definite form as basis for consideration by the comité d'examen, as follows:

ARTICLE 2. Il est interdit de placer des mines automatiques de contact amarrées de là d'une distance de trois milles marins à partir de la laisse de basse mer, ou le long de toute l'étendue des côtes, ainsi que des îles et des bancs qui en dépendent.

Pour les baies, le rayon de trois milles marins sera mesuré à partir d'une ligne droite, tirée en travers de la baie dans la partie la plus rapprochée de l'entrée au premier point où l'ouverture n'excèdera pas dix milles.

ART. 3. Devant les ports de guerre, la limite pour le placement des mines est portée à une distance de dix milles marins.

Sont considérés comme ports de guerre les ports, qui sont décrétés comme tels par l'Etat auquel ils appartiennent et ceux où existent des chantiers navals de construction.

ART. 4. Dans les limites indiquées aux deux articles précédents, les belligérants ont le droit de placer des mines automatiques de contact amarrées dans les eaux de leurs adversaires.

Toutefois il est interdit d'y placer des mines automatiques de contact dans le seul but d'intercepter la navigation de commerce.

ART. 5. Dans la sphère de leur activité immédiate, les belligérants ont de même le droit de placer des mines automatiques de contact en dehors des limites fixées par les articles 2-4 du présent règlement.



Les mines employées en dehors des limites fixées par les article 2-4 doivent être construites de façon qu'elles soient rendues inoffensives dans un délai maximum de deux heures après que le poseur les a abandonnées.

Art. 6 (réservé). La communication entre deux mers libres ne peut être barrée entièrement par des mines automatiques de contact. Mais le passage pourra y être soumis à des conditions qui seront décrétées par les autorités compétentes.

La disposition de l'alinéa 1<sup>er</sup> ne porte aucune atteinte aux règles établies par les traités et conventions existants, ni aux droits de la souveraineté territoriale. (Ibid., p. 671.)

With the exception of article 6 above the projet presented to the third committee closely resembled that before the comité d'examen.

Later the Colombian delegation proposed to make certain changes and to introduce as article 2—

L'emploi des mines automatiques de contact amarrées est absolument interdit excepté comme moyen de défense.

Les belligérantes ne pourront se servir desdites mines que pour la protection de leurs propres côtes et seulement jusqu'à la distance de la portée maxime des canons.

Dans le cas des bras de mer ou des passages maritimes navigables conduisant exclusivement aux côtes d'une seule Puissance, cette Puissance pourra barrer leur entrée, pour sa protection, en plaçant des mines automatiques de contact amarrées.

Il est absolument interdit aux belligérants de placer des mines automatiques de contact amarrées en pleine mer ou dans les eaux de l'ennemi. (Ibid., p. 680.)

*Circumstances determining use of mines.*—Some consideration must be given to the purposes for which mines are used. While there are those who would prohibit the use of mines altogether, these do not seem to be in the majority at the present time. Admitting that mines will for a time continue to be used, their use may be limited so that circumstances would condition the legality. Mines may be prohibited except for purposes of defense. There always arises in such a case a difference of opinion upon what constitutes defense, and it is not always possible to determine whether mines in a given region are placed for defense or offense. This difference of opinion appeared at the conference at The Hague in 1907. Many States in favor of limiting the use of mines could not be convinced that this method of restriction would realize that end. The Colombian proposition that

the use of anchored automatic contact mines should be absolutely prohibited except for purposes of defense was voted upon, receiving 16 affirmative and 15 negative votes, while 6 abstained from voting and 7 were absent. As this did not give an absolute majority, further consideration of this proposition was abandoned. (Ibid., Tome I, p. 292.)

Another proposition was made by the Netherlands delegation looking to special regulation of the use of mines in straits. This also did not receive sufficient support to make it a part of the proposed convention.

*Use of mines for intercepting commerce.*—It was definitely proposed at the Hague Conference to prohibit the use of mines for intercepting commerce. This proposition was not sufficiently supported, and the question came upon the form of restriction. The British delegation proposed to allow mines only before such ports as are considered "military ports."

The second draft of the report of the committee was as follows:

It is forbidden to lay automatic contact mines off the coast and ports of the enemy with the sole object of intercepting commercial shipping.

The German delegate declared that he reserved his vote upon this form, as it introduced a subjective element in the determination of the character of the act which in application would give rise to difficulties.

The British delegate remarked that the British proposition was advanced with the idea of avoiding the German objection. When the second draft was put to vote, 33 voted yes, 3 abstained, 7 were absent, and Germany reserved its vote, and the convention provided that mines for "the sole object of intercepting commercial shipping" were prohibited.

The recognized method of intercepting commerce with a belligerent is by blockade. The penalty for attempting to violate blockade may be condemnation of ship and cargo, but there is no penalty imposed upon the crew, as would be the case if mines were used to destroy the ship.

*Naval War College discussion, 1913.*—The conclusions drawn from the discussions at the Naval War College in 1913 were in accord with the general opinion of naval

men and of writers. This opinion shows a tendency toward more definite restriction upon the use of mines, both as regards character of the mines and as regards area within which they may be placed. The subject was, however, considered only as one part of the general topic of means of injuring the enemy. The conclusion as to torpedoes and mines was as follows:

Torpedoes and mines:

(a) It is forbidden to use torpedoes which do not become harmless when they have completed their run.

(b) It is forbidden to lay mines in the high seas except within the immediate area of belligerent operations.

(c) It is forbidden in the high seas and in marginal waters of the belligerent (1) to lay unanchored automatic contact mines except when they are so constructed as to become harmless one hour at most after those who laid them have lost control of them; (2) to lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

(d) A belligerent is forbidden to lay mines off the coast or before the ports of the enemy except for strictly military or naval purposes.

It is forbidden to lay mines in order to establish or to maintain a commercial blockade.

(e) When mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to provide as far as possible that these mines shall become harmless within a limited time, and should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

(f) At the close of the war the belligerent States undertake to do their utmost to remove the mines which they have laid, each State removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the State which laid them, and each State must proceed with the least possible delay to remove the mines in its own waters.

The belligerent States upon which the obligation to remove the mines falls after the end of the war should as soon as possible give notice that the mines have so far as possible been removed. (International Law Topics and Discussions, 1913, p. 147.)

*Institute of International Law, 1910-1913.*—The Naval War College, International Law Topics, 1913, pages 143-146, show that with slight modification in regard to the provision for removal of the mines after the war the rules of the Institute, approved in 1910, were approved in 1913.

These rules of the Institute follow closely the Hague convention relative to the laying of automatic contact submarine mines except as to the area. The Institute rule provides:

It is forbidden to lay in the open sea automatic contact mines, whether or not anchored.

At earlier sessions there had been proposed the following:

It is forbidden to lay fixed or floating mines in the open sea.

The main point upon which emphasis may be placed is the prohibition of mines in the open sea in distinction from marginal waters, and the report of 1910 shows that it was the intention of the Institute that this prohibition should be absolute. (23 *Annuaire de l'Institut de Droit International*, pp. 179, 429.)

*Discussion as to area, The Hague, 1907.*—The question as to limitation of area within which mines might be laid received much discussion and the propositions of the comité d'examen in respect to limitation of area were much reduced.

Admiral Siegel, speaking for the German delegation, assumed a hypothetical case to illustrate the ground of opposition to certain restrictions:

Aussi, la Délégation allemande doit-elle faire des réserves sur les articles dont les dispositions peuvent causer des malentendus et qui d'autre part interdiraient l'emploi des mines en beaucoup des cas, où cet emploi est indispensable. Il sera cité un seul exemple. Si une flotte X bloque la côte d'un pays Y, elle le fait pour lui couper toute communication par mer. Elle veut faire mourir le pays d'une lente inanition en le privant de ses moyens d'existence. Le pays Y fera tout son possible pour éviter un pareil sort et cherchera à tenir les navires de la flotte X à une distance aussi grande que possible de ses rivages. Dans le cas où les forces maritimes ne suffisent pas à atteindre ce but, l'État Y trouve dans les mines un auxiliaire précieux. Mais pour les mettre en activité, il faut les porter dans la proximité de l'ennemi. Or, la flotte X ne s'arrêtera pas toujours près de la côte, elle stationnera peut-être à une distance de 20 milles ou plus. Comme l'article 3 interdit l'emploi des mines à une distance au-delà de 3 milles, et en quelques cas de 10 milles de la côte, le défenseur se verrait privé du seul moyen qui pût forcer la flotte ennemie à s'éloigner de ces côtes. Cet état de choses serait absolument inadmissible. Mais ce n'est pas tout. L'article 5 interdit toutes les mines qui ne deviennent pas inoffensives deux heures après qu'elles ont été

abandonnées par celui qui les a posées. Si donc, dans le cas mentionné, le défenseur y a posé des mines devant ses navires dans l'espérance de pouvoir rester sur place pendant un certain temps, et s'il est attaqué par la flotte X beaucoup plus forte que lui et qui l'oblige à se retirer précipitamment, comment serait-il en mesure de trouver les moyens pour garantir que les mines qu'il a posées deviennent inoffensives dans les deux heures? Il est évident que c'est impossible, cet exemple qui reste parfaitement dans le cadre de ce qui peut arriver dans chaque guerre démontre jusqu'à l'évidence que les dispositions des articles 3 et 5 sont inacceptables au point de vue militaire. Il convient en outre de faire observer que dans le cas qui vient d'être cité on ne saurait dire que les intérêts de la navigation pacifique soient en jeu. Entre une côte bloquée et la flotte bloquante aucune navigation de commerce ne peut exister. Pourquoi alors ces restrictions inacceptables? (Deuxième Conférence Internationale de la Paix, Tome III, p. 378.)

Sir Ernest Satow, of the British delegation, set forth the reasons why the general public should be deeply interested in the regulation of the use of submarine mines and the dangers of any considerable freedom in the use of mines. In one part of the somewhat extended discussion Sir Ernest Satow remarks:

Nous sommes d'avis que la pose de mines amarrées en dehors des eaux territoriales des belligérants et au-delà d'une limite de dix milles marins devant les ports de guerre, arsenaux militaires, ou établissements de constructions navales ou de radoub, doit être interdite aux belligérants. Le droit qu'accorde le projet de poser des mines amarrées en pleine mer dans la "sphère d'activité immédiate donne aux belligérants la faculté de semer ces engins dans toutes les mers peu profondes. Ainsi elles pourraient être posées dans une grande partie de la Baltique, dans la Mer du Nord, la Manche, sur les côtes de la Méditerranée, pour ne pas parler du Détroit de Malacca, des parages des Indes Néerlandaises, du Golfe du Tonkin et de la Mer Jaune. Il est vrai qu'il est stipulé au 2<sup>e</sup> alinéa de l'article 5 que les mines amarrées en pleine mer devront être construites de façon à devenir inoffensives dans un délai maximum de deux heures après qu'elles auront été abandonnées par le belligérant poseur, mais comment cette stipulation pourra-t-elle être mise à exécution? Sauf dans le cas de la mine électro-mécanique, la mine une fois posée ne peut être rendue inoffensive que par l'action d'une contre mine qui, elle, agit instantanément. Nous ne croyons pas que l'on puisse inventer une mine qui devienne inoffensive deux heures après que le belligérant poseur aura quitté les lieux, peut-être à la hâte pour échapper à la poursuite de l'ennemi; la stipulation nous paraît donc demander l'impossible et il nous paraît préférable de supprimer l'article 5 en entier ce qui aura pour résultat de faire disparaître aussi l'alinéa 2 de l'article 9.

L'article 4, alinéa 3, déclare qu'il "est interdit de placer des mines automatiques de contact devant les côtes et les ports de l'adversaire dans le seul but d'intercepter la navigation de commerce." C'est là une clause qui laisse au belligérant une échappatoire bien dangereuse. On avait proposé dans le comité de ne permettre la pose de mines devant un port de commerce qu'à la condition qu'il y eût dans ce port au moins une grande unité de combat, mais la proposition fut vivement combattue et dut, par conséquent, être retirée. Cependant il serait, à notre avis, tout à fait contraire à l'esprit et à la lettre de la Déclaration de Paris de permettre qu'un blocus fût maintenu, totalement ou en partie, à l'aide de mines. Je me permets de vous rappeler le texte même du passage qui a trait à cette question: "Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi." Il est clair qu'il s'agit ici d'une force suffisante composée de navires de guerre, et que l'on ne peut comprendre dans cette catégorie des mines sous-marines qui ne sont sujettes à aucun contrôle et qui ne contiennent en elles aucune preuve évidente de l'intention de fermer accès du port bloqué. Il serait par conséquent bon de tirer ce point au clair afin de ne laisser subsister aucun équivoque, et c'est pourquoi nous avons l'honneur de proposer le texte suivant à la place de celui que nous avons sous les yeux:

"Il est interdit de poser des mines automatiques de contact devant les ports de l'adversaire autres que ceux qui sont considérés comme ports de guerre." (Ibid., p. 380.)

Gen. Porter, of the American delegation, speaking on the proposed convention, says of the clauses particularly relating to area in which mines may be placed:

Il est évident que la détermination de la limite de trois milles serait souvent extrêmement difficile sur une côte bordée d'îles et de bancs partiellement ou totalement submergés, et qui peut-être ne seraient même pas relevés; mais l'objection capitale à cet article est que la portée des canons de vaisseaux de guerre modernes étant de 15,000 yards, la distance de trois milles ou 6,000 yards est moindre que la moitié de leur portée; ainsi des vaisseaux pourraient attaquer les côtes avec impunité malgré la défense au moyen de mines.

Il est vrai que la superficie de la pose des mines a été étendue par un vote du comité à la "sphère d'activité immédiate," et tel est le but du 1<sup>er</sup> alinéa de l'article 5, mais le 2<sup>e</sup> alinéa de cet article stipule que les mines ainsi placées en dehors de la limite de trois milles deviendront inoffensives deux heures après qu'elles auront été abandonnées. Il est clair que ceci est impossible, étant donné qu'une mine aussi intelligente n'a jamais été imaginée. Si le navire faisant la patrouille du champ des mines est forcé de rentrer par suite de l'approche de l'ennemi toute communication physique avec les mines est nécessairement rompue, et l'ennemi se fiant à la bonne foi et à l'habileté technique avec lesquelles les stipulations d'une convention ont

été exécutées par l'adversaire peut prendre une base de tir commode après que deux heures se sont écoulées, et procéder à la destruction de routes, ponts, viaducs, tunnels, docks et autres établissements de manufactures et de constructions de navires qui se trouvent en deçà de trois milles de la laisse de basse-mer, malgré toute défense de mine.

Évidemment les stipulations de l'article 5, alinéa 2, sont prohibitives, et ceci étant tacitement admis, une disposition fut introduite dans l'article 3, en vue de permettre l'usage de mines amarrées à dix milles en avant des ports de guerre, vraisemblablement déjà fortement fortifiés, disposition qui ne subit aucune restriction par le 2<sup>e</sup> paragraphe de l'article 5, tandis que, par contre, le même droit est refusé à des ports sans défense. Il est vrai que le 2<sup>e</sup> alinéa de l'article 3 permet pratiquement de déclarer tout port, port de guerre, mais le droit légitime de défense ne devrait pas être subordonné à l'interprétation d'une stipulation intentionnellement vague.

L'article 3 permet à la défense de placer des mines jusqu'à la limite de 10 milles devant tout port que l'on peut déclarer port de guerre. L'article 4, alinéa 2, permet seulement à la force attaquante de placer des mines en dehors de la limite de trois milles à partir de la laisse de basse-mer de la côte de son adversaire, quand les établissements de construction de navires ou autres sont la propriété de l'État; inégalité qui a été proposée à la session de l'Institut de Droit International et rejetée, ainsi que cela est signalé dans le rapport très compétent actuellement soumis à la commission.

Les articles 2 et 3 ne sont pas acceptés par la Délégation des États-Unis. Ils portent une atteinte sérieuse aux droits existants et nécessaires à la défense; ils sont vagues et complexes au point de constituer une menace de sérieux malentendus s'ils étaient acceptés.

Les 1<sup>er</sup> et 2<sup>e</sup> alinéas de l'article 4 ne sont pas acceptés par nous en raison de l'inégalité de leurs dispositions et aussi de l'incertitude de leur application. (Ibid., p. 386.)

Admiral Sperry, also of the American delegation, had said in the comité d'examen:

L'omission, dans la proposition, de la Délégation des États-Unis d'Amérique relativement aux mines sous-marines, d'une limitation définie des emplacements dans lesquels elles peuvent être placées, n'est pas due à une sympathie quelconque pour l'usage général des mines au-delà des eaux territoriales, méthode que, en commun avec tout le monde civilisé, elle condamne, mais bien à d'autres considérations (annexe 17).

Le terme "eaux territoriales" n'est peut-être pas plus certain dans son application que les limites mesurées; mais le délégué naval des États-Unis n'est pas préparé à dire qu'une limitation d'une manière ou d'une autre ne porterait pas atteinte au droit de défendre les 4,000 milles de la côte continentale des États-Unis, à certains points qui doivent être approchés par un chenal tortueux entre des récifs submergés, loin du rivage, où quelques mines empêcheraient absolument

d'avoir accès. Dans une île, environnée de récifs, des Philippines, il y a une grande baie entourée de tous côtés par la terre, qui abriterait la flotte de la plus grande Puissance.

Les Puissances, qui sont représentées ici, ont de vastes et riches possessions dans l'Océan Pacifique et l'Océan Indien, où les ports et les îles sont abrités par des barrières de récifs de corail, avec seulement ici et là un passage qui peut être ou non en deçà de dix, ou en deçà de cent milles de la terre ferme.

Les récifs peuvent être découverts ou non à marée basse. Où est la limite de la marée basse? A-t-il été décidé que toutes les eaux endedans de récifs sont des eaux territoriales? Les trois milles seront-ils mesurés des récifs et au-delà? La côte (Lasteric) d'Australie est abritée pendant plus de mille milles par le Grand Banc de Récifs à une distance de vingt à cent cinquante milles du rivage. En dedans de ce récif, où il n'y a que de loin en loin des passages, il existe un labyrinthe de récifs moindres et d'flots, mais dans les mille milles les plus gros vaisseaux peuvent naviguer en sûreté sous la charge d'un pilote. Il n'est pas nécessaire pour un navire n'allant pas à un port australien de passer en dedans, et les eaux intérieures ne peuvent guère être considérées comme faisant partie de la haute mer. Il n'est pas à la connaissance du Délégué des États-Unis si elles sont considérées ainsi; mais il semble douteux que les nationaux de cette grande et riche communauté abandonnent volontiers ce qui serait presque une défense parfaite des points importants.

Il y a beaucoup de Puissances représentées ici, dont les côtes de leurs vastes empires coloniaux sont protégées par des remparts presque parfaits de corail, comme tous les officiers de marine le savent, et il serait bon de considérer avec soin les effets qui pourraient résulter de toute provision conventionnelle, sur laquelle nous pourrions nous mettre d'accord, et qui une fois faite, sera difficile à dénoncer. (Ibid., p. 408.)

When the articles of the proposed convention relating to areas in which mines might be placed were brought before the full committee, opinion was not sufficiently favorable to warrant presenting articles 2-5 of the report of the comité d'examen to the full conference. The suppression of these articles necessarily led to certain amendments in articles which were related.

The suppression of reference to the limitation of area within which mines might be used was not regarded as giving an unlimited right to belligerent or to neutral to use mines indiscriminately in any area. It was recognized that a very heavy responsibility rested upon the one who placed a mine to see that it did not injure neutrals.



The area of the use of mines was broadly left to "the conscience, the good sense, and the consciousness of the obligations imposed by the principles of humanity." (Ibid., Tome I, p. 289.)

*Conclusion.*—From the discussion there was evident widely divergent opinion as to the proper regulations in regard to area. From the votes there was no decisive conclusion. While much can be left to the sense of international obligation, it would seem that certain general rules might be established without unduly impairing the rights of innocent parties while securing reasonable freedom of action for belligerents.

*Removal of mines.*—As belligerents may not only place mines within their own waters and on the high seas, but also within the waters of one another under present regulations, it is necessary that some provision be made for the removal of the mines at the close of the war. Naturally also a state would not desire that a foreign vessel should enter its waters for the purpose of removing mines even in time of peace. Of course, there may be, as the delegate of the United States pointed out, complications and difficulties in the removal of mines. Though the party who placed the mines is under obligation to notify the other of the situation of the mines, the difficulties of exact statement of these facts may be great, mines may have drifted, or may have broken loose so that it is impossible to give accurate information. The placing of mines off an enemy coast would usually be undertaken at considerable risk, would usually be hastily performed, and accurate locations would be correspondingly lacking.

The mines laid by a state within its own waters would naturally be removed by that state, but it may be well for the safety of navigation in general that this removal be made obligatory.

The mines laid in the high seas, if this practice is allowed, might constitute the greatest danger. The difficulty in picking up these mines would be great.

Article 5 of the Hague convention relative to the laying of automatic contact submarine mines seems to be generally approved, though it may be questioned whether

it will accomplish in fact what is hoped. The article is as follows:

At the close of the war, the contracting powers undertake to do their utmost to remove the mines which they have laid, each power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the power which laid them, and each power must proceed with the least possible delay to remove the mines in its own waters.

*Precautions as to anchored mines.*—The Naval War College discussion in 1905 and the discussion at The Hague in 1907 as well as the discussion of the Institute of International Law through several years, show agreement upon the point that anchored contact mines should be so constructed as to become harmless when breaking adrift.

Article 3 of The Hague Convention of 1907 is:

When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to provide as far as possible that these mines shall become harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice to mariners, which must also be communicated to the Government through the diplomatic channel

Manifestly this article is very general in its terms. Such terms as "every possible precaution" seem to guarantee ample care for the peaceful shipping.

The next clause provides that the mines "shall become harmless within a limited time," but no limit is named. The limit may, therefore, be hours, days, weeks, months, or perhaps years. The notice of mines not under surveillance must be given "as soon as military exigencies permit." The belligerent must, of course, be the judge in most cases of "military exigencies."

As Capt. Behr of the Russian delegation said, uncontrolled mines should in principle become harmless as soon as possible. "La difficulté ne commence que lorsqu'on veut réaliser ce principe." It is necessary to consider the technique of mine construction and the possibility of meeting the proposed requirements. Capt. Behr further maintained that a satisfactory solution

would require time and experiment, but some regulation would then be valuable in calling attention to the matter of the necessity of further regulation at a later date. The discussion at The Hague in 1907 is summarized in the report as follows:

Malgré le caractère plus ou moins vague des différentes obligations, énoncées dans l'article 6, on a été d'accord sur leur efficacité, attendu que tout état se fera certes un devoir de les observer rigoureusement, en procédant notamment le plus tôt possible aux notifications décrétées, dès que les exigences militaires lui permettront de le faire. Quant aux conditions de construction, dont parle l'alinéa 2 de l'article et "au laps de temps limité" qui y est prévu, tout en étant unanime, que la fixation de ce délai appartient à l'état, qui a posé des mines amarrées, afin que ces mines ne continuent pas à être dangereuses longtemps après la fin des hostilités, on a longuement discuté la possibilité, au point de vue technique, de suffire à ces obligations. Le Capitaine de Vaisseau Ottley rappela à ce propos "que les lois de l'action électro-galvanique entre deux métaux dissemblables, en immersion, prêtent un moyen facile et non coûteux de changer même les coques des mines existantes, afin de satisfaire à la condition de l'article 6; il suffirait de percer un trou d'une grandeur de quelques centimètres dans la coque d'une mine et de fermer le trou par un bouchon en métal, tel que le zinc; en variant le caractère métallique du disque et en modifiant son épaisseur, on pourra régler plus ou moins la période, pendant laquelle la mine restera flottante et active; plus le disque sera mince, plus la vie active de la mine sera courte."

Ces constatations, présentées par la Délégation britannique dans une des dernières séances du comité, ne rencontrèrent pas d'objections de la part des autres délégués techniques présents; néanmoins, on ne crut pas pouvoir accepter la proposition, renouvelée par la Délégation britannique, de supprimer les mots "dans la mesure du possible" qui avaient été adoptés auparavant. (Deuxième Conférence Internationale de la Paix, Tome III, p. 418.)

There are some who maintain that the anchored contact mine may be and is more dangerous than the un-anchored contact mine, saying:

The unrestricted use of anchored contact mines in open shallow seas will prove such a menace to all vessels which traverse such waters, that their entire prohibition seems imperative for the safety of neutrals. Free distribution of anchored contact mines will deny navigation of such waters to all commerce during the period of hostilities and for an unlimited time after hostilities have ceased. The very fact that such mines will have to be laid in open shallow waters under cover of darkness or fog precludes accurate location of them, precludes accurate information of such mine dangers to innocent commercial vessels, and precludes removal of all such mines at the close of the war. Inaccurately located mine fields present a greater danger to shipping than a

poorly charted reef, because a mine field laid quickly at night some distance from fixed observation marks would be a worse menace to navigation than a reef surveyed under similar adverse conditions.

The loose uncontrolled buoyant contact mine is a terrible menace to human life and to neutral commerce—and such drifting buoyant mines will remain a danger to shipping throughout vast areas of the sea for a long time after peace has been declared.

Unanchored contact mines ("floating" mines) being of a buoyant type can be designed with a positive limitation of operative life that is, they can be made to become harmless by sinking after being in the water for a fixed period of time. Thus the "floating" or unanchored contact mine would not be a lasting menace to neutral shipping as would be the case with drifting mines of the anchored contact type. Nor would floating mines present as much danger to neutrals as securely anchored contact mines, for the reason that the former (owing to their limited operative life) would be laid in the immediate area of hostilities, which in itself would be sufficient warning of danger to neutral vessels, while on the other hand the hidden anchored mine fields might be laid anywhere on soundings, be very poorly charted, and probably without timely warning to neutrals. It would not be difficult to warn neutral vessels away from areas where "two-hour" floating mines have been strewn, but would a belligerent divulge to neutrals the location of fixed mined areas and thus run the risk of this information finding its way to the enemy?

While the above position seems extrema to some, it is nevertheless necessary to observe the fact that during the Russo-Japanese war, the drifting mines caused great damage even in a maritime area where there was comparatively little shipping. If a like situation should arise in the vicinity of a great sea route, the results are serious to contemplate. Whatever the view in regard to the matter of anchored contact mines if they are not to be entirely prohibited, the regulations as to their use should be clear and comprehensive.

There are conditions for which it seems difficult to provide adequate safeguards. Such would be the case when a vessel approaches a mined area in a fog. The vessel on guard to warn innocent vessels may not discover the approaching vessel or may be in doubt as to its identity. The same condition may arise in a storm or in darkness.

The notification by public announcement of the general area of mining operations may be of little service to the neutral or innocent vessel unless it is of a nature to give such information to the opposing belligerent as to make the mining operations of little use to the belligerent plac-

ing the mines. For if sufficiently definite information for safe navigation is given in the notification this information will equally serve the other belligerent. It would seem therefore that the notification would necessarily be such as to define in general terms the mined area, the conditions of entrance, etc., and until this information can be presumed to be known to innocent shipping there should be a vessel or vessels stationed in the neighborhood to warn approaching shipping.

From the discussion it is evident that the regulations in regard to precautions for the safety of peaceful shipping should be more specific in order that the innocent shipping may be properly protected and in order that the belligerent may know when he has conformed to requirements.

*Conclusion.*—The following regulation may be proposed for safeguarding peaceful shipping against the dangers of mined areas:

When anchored automatic contact mines are employed every possible precaution must be taken for the security of peaceful shipping including—

1. An advance notice to foreign governments and to mariners specifying the general limits of the mined area.

2. Provision for warning peaceful vessels approaching the mined area.

3. Specification of the time during which the mines will be dangerous.

The same precautions should be taken in the use of mines by neutrals.

*Use of mines by neutrals.*—The demand for the use of mines by neutrals was particularly emphasized by the Brazilian and by the Netherlands delegates at The Hague in 1907. The Brazilian delegate advocated the use of mines by neutrals for the guaranteeing of respect for their neutrality. The Netherlands delegate directed attention not merely to the preservation of neutrality, but also to the fulfillment of neutral obligations. The report contains a résumé of the points of view:

L'idée fondamentale contenue dans ces deux propositions était la même; la proposition brésilienne limitait seulement davantage, quant à leur espèce, les mines que les neutres pourraient employer.

S. Exc. le Vice-Amiral Röell attira l'attention de la sous-commission sur la nécessité de réglementer cette matière et cela à un double point de vue; d'un côté, pour reconnaître expressément la faculté des neutres de poser des mines, en vue de préserver leur neutralité, tout en leur permettant en même temps de se conformer aux devoirs, qui leur incombent vis-à-vis des deux belligérants, de l'autre côté pour leur imposer, quant à l'usage des mines, les mêmes obligations qui seraient imposées aux belligérants, dans l'intérêt de la navigation pacifique. Le Capitaine de Frégate Burlamaqui expliqua à son tour la nécessité de compléter dans ce sens le projet britannique, qui ne paraissait avoir en vue que les belligérants; il insista, en même temps, sur la nécessité d'une notification par les neutres, générale ou spéciale, selon les circonstances du moment, des régions dans lesquelles ils auraient placé des mines. Il invoqua, à l'appui de ces considérations, les décisions prises par l'Institut de Droit International dans la session de Gand et les opinions de plusieurs auteurs, connus en matière du droit des gens; il conclut en faveur de la faculté, pour les États neutres, de poser des mines en vue de leur droit primordial de conservation. (Deuxième Conférence Internationale de la Paix, Tome III, p. 419.)

Discussion on other important points is summarized in the report:

Mais on se demanda, si l'assimilation des neutres aux belligérants devait aussi s'étendre quant aux lieux où des mines sous-marines pourraient être mouillées et si les précautions à prendre par les neutres ne devaient pas être plus précises et plus rigoureuses que celles prévues pour les belligérants. Le Contre-Amiral Arago exposa que, quant à ce qui concerne les neutres, il faudrait se contenter de leur permettre la pose de mines seulement dans la zone de trois milles; il serait encore nécessaire de les obliger à donner avis préalable à la navigation des lieux, où ils voudraient poser des mines, et de notifier cet avis d'urgence aux autres Gouvernements; les raisons militaires, dit-il, qui donnent plus de latitude aux belligérants, ne peuvent pas être invoquées pour les neutres; la zone de dix milles a été accordée aux belligérants surtout en vue du danger de voir leurs ports bombardés par les forces navales ennemies; ce danger n'existe pas pour les neutres. La latitude accordée aux belligérants, quant à la notification, répond à des exigences de guerre impérieuses; le neutre ne se trouve pas dans pareille situation; il peut toujours notifier et il doit le faire d'avance, parce que ses eaux sont censées être ouvertes au libre passage des navires pacifiques.

Aux objections, tirées du droit des neutres de se défendre dans la même mesure que les belligérants et de la possibilité qui devrait être accordée aux neutres en vue de se préparer éventuellement à la guerre, il fut répondu que les neutres n'ont pas à se défendre, ils n'ont qu'à défendre leur neutralité, ce qui n'implique pas une égalité de droits avec les belligérants. Quant aux préparatifs pour une guerre éventuelle il serait évident que ces préparatifs ne sont pas visés par les dispositions restreignant les neutres à poser des mines dans une zone de trois milles. (Ibid, p. 420.)

The result of the vote showed practically no difference of opinion upon the main points, and the conference adopted a general regulation embodied in article 4:

Any neutral power which lays automatic contact mines off its coasts must observe the same rules and take the same precautions as are imposed on belligerents. The neutral power must inform mariners by a notice issued in advance where automatic contact mines will be laid. This notice must be communicated at once to the Governments through the diplomatic channel.

*Conclusion.*—The laying of mines by a neutral State should not be prohibited.

*Provision for exemption from rules as to mines.*—While the rules of the Hague convention relative to the laying of automatic contact submarine mines were not very strict, there were some States whose delegates were not prepared to accept even these regulations. To meet the demands of these States, article 6 was adopted:

The contracting powers which do not at present own perfected mines of the type contemplated in the present convention, and which consequently could not at present carry out the rules laid down in articles 1 and 3, undertake to convert the matériel of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

The statement of the position in support of this article was more fully made by the Austrian delegation in presenting the amendment upon which the article is based:

La marine austro-hongroise ne dispose pas, à l'heure qu'il est, de mines automatiques de contact amarrées remplissant la condition prévue par l'article 1<sup>er</sup>, 2<sup>e</sup> alinéa, du texte arrêté sur la base des délibérations du comité d'examen, à savoir de devenir inoffensives dès qu'elles auront rompu leurs amarres. Pour se conformer à la clause dont il s'agit, la marine austro-hongroise se trouve donc dans la nécessité de procéder à une transformation de son matériel de mines. Pour cette transformation la Délégation d'Autriche-Hongrie ne saurait, cependant, accepter ni le délai de trois ans proposé, ni tout autre délai fixé à l'avance, une mesure de ce genre contenant, indépendamment de la volonté personnelle, un élément d'incertitude qui, tant qu'il subsiste, s'oppose évidemment à prendre à ce sujet un engagement formel que l'on ne serait, peut-être, pas à même de remplir.

Dans tout perfectionnement en matière technique, l'époque où l'on parviendra à trouver une solution satisfaisante à un problème que l'on se propose de résoudre ne saurait guère être indiquée à l'avance. Même si le principe scientifique sur lequel repose l'invention à faire était,

au point de vue théorique, des plus simples, des obstacles absolument imprévus et qu'il est bien souvent difficile de vaincre peuvent, à tout bout de champ, venir entraver la réalisation pratique de l'idée.

Aussi ne faut-il pas perdre de vue que dans le cas qui nous occupe, il ne serait point suffisant de construire un appareil de fonctionnement exact, au moyen duquel une mine ayant rompu son amarre fût automatiquement rendue inoffensive; il s'agit également, et ceci ne me semble pas de moindre importance, de donner à l'appareil en question une construction telle que les autres parties mécaniques de la mine n'en soient point altérées au préjudice de sa valeur militaire, que la mine reste simple et non dangereuse à manier et qu'elle ne cesse de fonctionner d'une manière sûre et efficace. Ce n'est qu'après avoir éprouvé, à ces différents points de vue, l'appareil à construire, ce qui selon toute probabilité nécessitera une série de longues expériences, que l'on pourra se mettre à la transformation du matériel de mines et indiquer alors approximativement l'époque à laquelle cette opération pourra être terminée.

Or, si, telles que les choses se présentent, nous voulions fixer, dès maintenant, par voie conventionnelle, un terme pour la mise en usage des mines perfectionnées, et si à l'expiration du délai la transformation en question n'était pas encore exécutée par une des Puissances contractantes, cette dernière se trouverait en présence d'une situation des plus embarrassantes. Car elle devrait, si une guerre venait à éclater dans l'intervalle, ou renoncer à l'emploi des mines qui n'ont pas encore été soumises à la transformation, ou bien manquer à l'engagement conventionnel. L'une et l'autre de ces éventualités doivent nécessairement être écartées. Il nous semble donc que si l'on prend au sérieux l'engagement qu'il s'agit de contracter, on ne saurait accepter, dans l'espèce, un délai fixé à l'avance.

Dans cet ordre d'idées la Délégation d'Autriche-Hongrie se permet de proposer les amendements suivants:

*Article premier.*—Ajouter à l'alinéa 2 la disposition suivante:

Les Puissances maritimes qui ne disposent pas encore de ces mines perfectionnées et qui, par conséquent, ne sauraient actuellement s'associer à cette interdiction, s'engagent à transformer, aussitôt que possible, leur matériel de mines afin que ces dernières répondent à la condition susmentionnée.

ARTICLE 9.—Supprimer cet article.

Le fait que la transformation des mines s'impose non seulement par des considérations humanitaires, mais aussi par l'intérêt même des Puissances, offre une garantie suffisante que l'engagement formulé dans la proposition ci-dessus soit fidèlement exécuté. De cette façon le but humanitaire auquel on aspire sera réalisé dès qu'il y aura moyen de le faire. Agir autrement et accepter dès maintenant un délai déterminé pour la transformation des mines, ce serait, de l'avis de la Délégation d'Autriche-Hongrie, prendre un engagement avec une restriction mentale, ce qui évidemment ne serait guère en harmonie avec l'obligation absolue découlant d'une stipulation conventionnelle.



Quant aux mines non-amarrées dont il est question au premier alinéa de l'article 1<sup>er</sup> de la Délégation d'Autriche-Hongrie, s'associant entièrement aux observations présentées à ce sujet par le Délégué naval de Grande-Bretagne, estime que l'on pourrait bien se passer d'une disposition analogue à celle dont il vient d'être parlé ou de toute autre disposition contenant la fixation d'un terme.

En ce qui concerne la disposition de 2<sup>e</sup> alinéa de l'article 5, la Délégation d'Autriche-Hongrie s'abstient de toute proposition, la clause en question lui paraissant, en principe, inacceptable. (Ibid., p. 673.)

There were propositions to fix a limit of time for transformation of mines not meeting the requirements of the proposed regulations as one year for unanchored mines and three years for anchored mines or one year for all mines.

It is plain that as most powers did not disclose the type of mines which they possessed almost any power might contend that it had not had time for conversion of its mines. The expression, "as soon as possible," which should determine the limit of the period for conversion to the prescribed type might allow, as some parties assumed it would, an indefinite period. In fact this clause in most respects renders the convention of little use except as a statement of what may be desired and as a project which may become the basis of further discussion. However, there would be a just ground for maintaining that seven years would be sufficient time for any State intending to act "as soon as possible" to carry out the conversion of mines into the type required in the convention.

*Conclusion.*—Article 6 of Convention VIII should not be continued in force.

*Use of torpedoes.*—The Russian delegation proposed an amendment to the original project submitted by Great Britain to the effect that—

Les torpilles seront construites de façon à ce que, en tant que cela est possible, elles deviennent inoffensives, lorsqu'elles auront manqué leur but.

The words "en tant que cela est possible" were not acceptable, but the idea embodied in the remaining part of the clause was introduced with little discussion into

the first article of the convention. The report of the committee says of this subject:

Quant aux mines automatiques de contact amarrées et aux torpilles automatiques, l'entente fut, en ce qui concerne leur construction, plus facile à établir. La proposition russe sur les torpilles automatiques (annexe 18) fut adoptée à l'unanimité avec suppression des mots "autant que possible" qui figuraient dans l'interdiction proposée par la Délégation Impériale, concernant l'emploi de pareilles torpilles, qui ne deviennent pas inoffensives lorsqu'elles auront manqué leur but." (Deuxième Conférence Internationale de la Paix, Tome III, p. 404.)

Recently there has been objection to the restriction imposed upon the use of torpedoes. Some regard these as propelled mines and under a measure of control, because their speed, direction, and time of sinking may be regulated with much greater degree of certainty than in the case of unanchored mines. Unanchored mines are usually of simple and inexpensive construction as compared with the elaborate and expensive torpedo. Unanchored mines are much more at the mercy of the current and may drift in any direction. The torpedo may be directed for a considerable time and its mechanical construction is such that it can be made to sink at a fixed time with a great degree of certainty that there will be no mistake. The proposition has accordingly been made to allow to the torpedo a period equivalent to that allowed to the unanchored mine on the following grounds: that from its nature the torpedo is more under control than the unanchored mine, that the present regulation is not a practicable one as there is no way by which the belligerent at which the torpedo is aimed can tell whether the torpedo has failed to hit its mark in most instances, and that it is inexpedient to discriminate in favor of the cheap and dangerous unanchored mine against the carefully constructed and controlled torpedo.

*Conclusion.*—The use of torpedoes should not be further, but should be less, regulated if any change is made in the convention.

*General.*—The Hague Convention VIII, 1907, relative to the laying of automatic contact submarine mines was admitted to be tentative. There was much difference of opinion in the conference which adopted the convention.

The interests of the powers were not identical. The actual value of mines in maritime warfare was a matter of difference of opinion. The coupling of the idea of submarine mine with the idea of the torpedo was not altogether logical without further distinction, as torpedoes would in general be more completely under control than would some forms of mines. Uncontrolled and hidden perils like unanchored submarine mines or torpedoes of similar character should be prohibited outside the area of immediate belligerent operations. At present it seems possible to draw certain conclusions of a general character.

*Conclusion.*—(a) The use of submarine mines should not be absolutely prohibited.

(b) The use of unanchored automatic contact mines should be prohibited or more definitely restricted.<sup>1</sup>

(c) The area within which mines may be placed should be determined by regulation.

(d) When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping, including—

1. An advance notice to foreign governments and to mariners specifying the general limits of the mined area.

2. Provision for warning peaceful vessels approaching the mined area.

3. Specification of the time during which the mines will be dangerous.

(e) The laying of mines by a neutral State should not be prohibited.

(f) Article 6 of Convention VIII should not be continued in force.

(g) The use of torpedoes should not be further but should be less regulated if any change is made in the convention.

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<sup>1</sup> Using the phraseology of The Hague Convention and introducing the proposed changes, the following form may be suggested as meeting present requirements and opinions: It is forbidden to lay unanchored automatic contact mines except when they are so constructed as to become harmless one-half hour after those who laid them have lost control over them, and in every case before passing outside the area of belligerent activities.

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## APPENDIX.

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LES LOIS DE LA GUERRE MARITIME DANS LES  
RAPPORTS ENTRE BELLIGÉRANTS.

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## LES LOIS DE LA GUERRE MARITIME DANS LES RAPPORTS ENTRE BELLIGÉRANTS.

MANUEL ADOPTÉ PAR L'INSTITUT DE DROIT INTERNATIONAL  
(SESSION D'OXFORD, 1913).<sup>1</sup>

### PRÉAMBULE.

L'Institut de droit international, dans sa session de Christiania, a déclaré maintenir fermement ses Résolutions antérieures, en ce qui concerne l'abolition de la capture et de la confiscation de la propriété privée ennemie dans la guerre maritime. Mais, constatant, en même temps, que l'acceptation de ce principe n'est pas encore acquise et considérant qu'aussi longtemps qu'elle ne le sera pas, le règlement du droit de capture est indispensable, il a chargé une Commission d'élaborer des dispositions prévoyant l'une et l'autre éventualité. C'est en exécution de cette dernière décision que l'Institut a, dans sa session d'Oxford, le 9 août 1913, adopté, en premier lieu, le Manuel qui suit, fondé sur le droit de capture.<sup>2</sup>

SECTION I<sup>re</sup>.—DES LIEUX OÙ DES HOSTILITÉS PEUVENT ÊTRE COMMISES.

ARTICLE 1<sup>er</sup>. Les règles spéciales à la guerre maritime ne sont applicables qu'à la pleine mer et aux eaux territoriales des belligérants à l'exclusion des eaux qui, sous le rapport de la navigation, ne doivent pas être considérées comme maritimes.

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<sup>1</sup> Ce Manuel a été adopté, à l'unanimité des 54 membres et associés présents, sauf une abstention, après cinq jours de délibérations. D'après les résolutions de l'Institut le texte en a été révisé par un Comité de rédaction, au point de vue de la forme et de la terminologie, et accompagné de quelques définitions.

<sup>2</sup> *Définitions.*—La *capture* est l'acte par lequel le commandant du bâtiment de guerre substitue son autorité à celle du capitaine du navire ennemi sous réserve du jugement ultérieur de la juridiction des prises quant au sort définitif du navire et de sa cargaison.

La *saisie*, lorsqu'elle s'applique au navire, est l'acte par lequel le bâtiment de guerre prend possession du navire arrêté, avec ou sans l'assentiment du capitaine de celui-ci. La saisie diffère de la capture en ce que le sort ultérieur du navire peut n'être pas en cause quant à l'éventualité de sa confiscation.

Appliquée aux marchandises seules, la saisie est l'acte par lequel le bâtiment de guerre, avec ou sans l'assentiment du capitaine du navire arrêté, prend possession de ces marchandises et les détient ou en dispose sous réserve du jugement ultérieur de la juridiction des prises.

La *confiscation* est l'acte par lequel la juridiction des prises valide la capture d'un navire ou la saisie de marchandises.

Le mot *prise* est une expression générale s'appliquant au navire capturé ou à la marchandise saisie. Il désigne également le fait de s'emparer d'un bâtiment de guerre.

Sont désignés comme *navires publics* tous navires autres que les bâtiments de guerre qui, appartenant à l'Etat ou à des particuliers, sont affectés à un service public et se trouvent sous les ordres d'un fonctionnaire dûment commissionné de l'Etat.

## SECTION II.—DE LA FORCE ARMÉE DES ETATS BELLIGÉRANTS.

ARTICLE 2. *Bâtiments de guerre*.—Font partie de la force armée d'un Etat belligérant et sont, dès lors, soumis comme tels aux lois de la guerre maritime:

1° Tous bâtiments appartenant à l'Etat qui, sous la direction d'un commandant militaire et montés par un équipage militaire, portent avec autorisation le pavillon et la flamme de la marine militaire.

2° Les navires transformés par l'Etat en bâtiments de guerre conformément aux articles 3 à 6.

ARTICLE 3. *Transformation des navires publics et privés en bâtiments de guerre*.—Aucun navire transformé en bâtiment de guerre ne peut avoir les droits et les obligations attachés à cette qualité, s'il n'est placé sous l'autorité directe, le contrôle immédiat et la responsabilité de la puissance dont il porte le pavillon.

ARTICLE 4. Les navires transformés en bâtiments de guerre doivent porter les signes extérieurs distinctifs des bâtiments de guerre de leur nationalité.

ARTICLE 5. Le commandant doit être au service de l'Etat et dûment commissionné par les autorités compétentes; son nom doit figurer sur la liste des officiers de la flotte militaire.

ARTICLE 6. L'équipage doit être soumis aux règles de la discipline militaire.

ARTICLE 7. Tout navire transformé en bâtiment de guerre est tenu d'observer dans ses opérations les lois et coutumes de la guerre.

ARTICLE 8. Le belligérant qui transforme un navire en bâtiment de guerre doit, le plus tôt possible, mentionner cette transformation sur la liste des bâtiments de sa flotte militaire.

ARTICLE 9. La transformation d'un navire en bâtiment de guerre ne peut être faite par un belligérant que dans ses propres eaux, dans celles d'un Etat allié également belligérant, dans celles de l'adversaire, ou enfin dans celles d'un territoire occupé par les troupes de l'un de ces Etats.

ARTICLE 10. *Transformation des bâtiments de guerre en navires publics ou privés*.—Un bâtiment de guerre ne peut, tant que durent les hostilités, être transformé en navire public ou en navire privé.

ARTICLE 11. *Personnel belligérant*.—Font partie de la force armée d'un Etat belligérant et sont, dès lors, soumis comme tels aux lois de la guerre maritime, en tant qu'ils accomplissent des opérations sur mer:

1° le personnel des bâtiments indiqués à l'article 2;

2° les troupes de l'armée de mer, active ou de réserve;

3° le personnel militarisé existant sur les côtes;

4° les troupes régulières ou régulièrement organisées conformément à l'article 1<sup>er</sup> du Règlement de La Haye du 18 octobre 1907 concernant les lois et coutumes de la guerre sur terre, autres que celles de l'armée de mer.

ARTICLE 12. *Course, Navires privés, Navires publics ne constituant pas des navires de guerre*.—La course est interdite.

En dehors des conditions déterminées aux articles 3 et suivants, les navires publics et les navires privés, ainsi que leur personnel, ne peuvent pas se livrer à des actes d'hostilité contre l'ennemi.

Il est toutefois permis aux uns et aux autres d'employer la force pour se défendre contre l'attaque d'un navire ennemi.

ARTICLE 13.—*Population du territoire non occupé.*—La population d'un territoire non occupé qui, à l'approche de l'ennemi, arme spontanément des navires pour le combattre, sans avoir eu le temps de les faire transformer en bâtiments de guerre conformément aux articles 3 et suivants, sera considérée comme belligérante, si elle agit ouvertement et si elle respecte les lois et usages de la guerre.

### SECTION III.—DES MOYENS DE NUIRE À L'ENNEMI.

ARTICLE 14. *Principe.*—Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi.

ARTICLE 15. *Moyens perfides et barbares.*—Les ruses de guerre sont considérées comme licites. Toutefois les moyens qui impliquent la perfidie sont défendus.

Ainsi il est interdit:

1° De tuer ou de blesser par trahison des individus appartenant à la partie adverse.

2° D'user indûment du pavillon parlementaire, de faire usage de faux pavillons, uniformes ou insignes, quels qu'ils soient, notamment de ceux de l'ennemi, ainsi que des signes distinctifs de l'assistance hospitalière indiqués aux articles 41 et 42.

ARTICLE 16. Outre les prohibitions établies par des conventions spéciales il est interdit:

1° d'employer du poison ou des armes empoisonnées, ainsi que des projectiles que ont pour but unique de répandre des gaz asphyxiants ou délétères.

2° d'employer des armes, des projectiles ou des matières propres à causer des maux superflus. Rentrent spécialement dans cette catégorie les projectiles explosibles ou chargés de matières fulminantes ou inflammables, d'un poids inférieur à 400 grammes, et les balles qui s'épanouissent ou s'aplatissent facilement dans le corps humain, telles que les balles à enveloppe dure dont l'enveloppe ne couvrirait pas complètement le noyau ou serait pourvue d'incisions.

ARTICLE 17. Il est également interdit:

1° de tuer ou de blesser un ennemi qui, ayant mis bas les armes ou n'ayant plus le moyen de se défendre, s'est rendu à discrétion.

2° de couler un navire qui s'est rendu avant d'avoir recueilli l'équipage.

3° de déclarer qu'il ne sera pas fait de quartier.

ARTICLE 18. Le pillage et la dévastation sont interdits

Il est interdit de détruire des propriétés ennemies, hors les cas où ces destructions seraient impérieusement commandées par les nécessités de la guerre ou autorisées par les dispositions du présent règlement.



ARTICLE 19. *Torpillés*.—Il est interdit de faire usage de torpillés qui ne deviennent pas inoffensives lorsqu'elles auront manqué leur but.

ARTICLE 20. *Mines sous-marines*.—Il est interdit de placer en pleine mer des mines automatiques de contact, amarrées ou non.

ARTICLE 21. Les belligérants peuvent placer des mines dans leurs eaux territoriales et dans celles de l'ennemi.

Mais il leur est interdit, même dans ces eaux territoriales:

1° de placer des mines automatiques de contact non amarrées, à moins qu'elles ne soient construites de manière à devenir inoffensives une heure au maximum après que celui qui les a placées en aura perdu le contrôle.

2° de placer des mines automatiques de contact amarrées qui ne deviennent pas inoffensives dès qu'elles auront rompu leurs amarres.

ARTICLE 22. Un belligérant ne peut placer des mines devant les côtes et les ports de son adversaire que pour des buts navals et militaires. Il lui est interdit de les y placer pour établir ou maintenir un blocus de commerce.

ARTICLE 23. Lorsque des mines automatiques de contact, amarrées ou non amarrées, sont employées, toutes les précautions doivent être prises pour la sécurité de la navigation pacifique.

Les belligérants pourvoient notamment, dans la mesure du possible, à ce que les mines deviennent inoffensives après un laps de temps limité.

Dans le cas où les mines cesseraient d'être surveillées par eux, les belligérants signaleront les régions dangereuses, aussitôt que les exigences militaires le permettront, par un avis à la navigation, qui devra être aussi communiqué aux gouvernements par la voie diplomatique.

ARTICLE 24. A la fin de la guerre, les Etats belligérants feront tout ce qui dépend d'eux pour enlever, chacun de son côté, les mines qu'ils auront placées.

Quant aux mines automatiques de contact amarrées que l'un des belligérants aurait laissées sur les côtes de l'autre, l'emplacement en sera notifié à l'autre partie par l'Etat qui les aura posées, et chaque Etat devra procéder, dans le plus bref délai, à l'enlèvement des mines qui se trouvent dans ses eaux.

Les Etats belligérants auxquels incombe l'obligation d'enlever les mines après la fin de la lutte devront, dans le plus bref délai possible, faire connaître que l'enlèvement de ces mines a été terminé dans la mesure du possible.

ARTICLE 25. *Bombardement*.—Il est interdit de bombarder des ports, villes, villages, habitations ou bâtiments qui ne se défendent pas.

Une localité ne peut pas être bombardée à raison du seul fait que, devant ses côtes, se trouvent mouillées des mines sous-marines automatiques de contact.

ARTICLE 26. Toutefois, ne sont pas compris dans cette interdiction les ouvrages militaires, établissements militaires ou navals, dépôts d'armes ou de matériel de guerre, ateliers et installations propres à être utilisés pour les besoins de la flotte ou de l'armée ennemie et les

bâtiments de guerre se trouvant dans le port. Le commandant d'une force navale pourra, après sommation avec délai raisonnable, les détruire par le canon, si tout autre moyen est impossible et lorsque les autorités locales n'auront pas procédé à cette destruction dans le délai fixé.

Il n'encourt aucune responsabilité dans ce cas pour les dommages involontaires qui pourraient être occasionnés par le bombardement.

Si des nécessités militaires, exigeant une action immédiate, ne permettraient pas d'accorder de délai, il reste entendu que l'interdiction de bombarder une ville qui ne se défend pas, subsiste comme dans le cas énoncé dans l'alinéa 1<sup>er</sup> et que le commandant prendra toutes les dispositions voulues pour qu'il en résulte pour cette ville le moins d'inconvénients possibles.

ARTICLE 27. Est interdit le bombardement, pour le non paiement des contributions en argent ou pour le refus d'obtempérer à des réquisitions de vivres ou d'approvisionnements, des ports, villes, villages, habitations ou bâtiments qui ne se défendent pas.

ARTICLE 28. Dans le bombardement, toute dévastation inutile reste interdite et, notamment, toutes les mesures doivent être prises par le commandant de la force assaillante pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences et à la bienfaisance, les monuments historiques, les hôpitaux et les lieux de rassemblement de malades ou de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Le devoir des habitants est de désigner ces monuments, ces édifices ou lieux de rassemblement par des signes visibles, qui consisteront en grands panneaux rectangulaires rigides, partagés, suivant une des diagonales, en deux triangles de couleur, noire en haut et blanche en bas.

ARTICLE 29. Sauf le cas où les exigences militaires ne le permettraient pas, le commandant de la force navale assaillante doit, avant d'entreprendre le bombardement, faire tout ce qui dépend de lui pour avertir les autorités.

ARTICLE 30. *Blocus*.—Les ports et côtes de l'ennemi ou occupés par lui peuvent être soumis à un blocus conformément aux règles du droit international.

#### SECTION IV.—DES DROITS ET DES DEVOIRS DU BELLIGÉRANT EN CE QUI CONCERNE LES CHOSES DE L'ENNEMI.

ARTICLE 31. A. *Navires et cargaisons*.—*Bâtiments de guerre*.—La force armée d'un Etat peut attaquer, pour s'en emparer ou les détruire, avec leur armement et leurs approvisionnements, les bâtiments de guerre de l'ennemi, même s'ils se trouvent, au début de la lutte, dans un port de l'Etat, ou sont rencontrés en mer dans l'ignorance des hostilités, ou si la force majeure les a contraints d'entrer dans un port ou les a jetés sur les côtes du dit Etat.

ARTICLE 32. *Navires publics et navires privés*: *Arrêt, visite et recherches*.—Tous navires autres que ceux de la marine de guerre, qu'ils

appartiennent à l'Etat ou à des particuliers, peuvent être sommés par un bâtiment de guerre belligérant de s'arrêter pour qu'il soit procédé, à leur bord, à une visite et à des recherches.

Le bâtiment de guerre du belligérant, pour inviter le navire à s'arrêter, tirera un coup de canon de semonce à poudre et, si cet avis n'est pas suffisant, il tirera un projectile dans l'avant du navire. Auparavant, ou en même temps, le bâtiment de guerre hissera son pavillon au dessus duquel, en temps de nuit, un fanal sera placé. Le navire répond au signal en hissant son propre pavillon et en s'arrêtant aussitôt; dans ce cas, le bâtiment de guerre enverra au navire arrêté une chaloupe montée par un officier accompagné d'un nombre d'hommes suffisant, dont deux ou trois seulement se rendront avec l'officier à bord du navire arrêté.

La visite consiste en premier lieu dans l'examen des papiers de bord.

Si les papiers de bord sont insuffisants ou ne sont pas de nature à exclure les soupçons, l'officier qui a opéré la visite est en droit de procéder à des recherches sur le navire, et il doit requérir à cet effet le concours du capitaine.

La visite des paquebots-poste doit, comme il est dit à l'article 53, être effectuée avec tous les ménagements et toute la célérité possibles.

Les navires convoyés par un bâtiment de guerre neutre ne sont soumis à la visite que dans la mesure des règles relatives aux convois.

ARTICLE 33. *Principe de la capture.*—Les navires publics et les navires privés, de nationalité ennemie, sont sujet à capture, et les marchandises ennemies, publiques ou privées qui existent à leur bord, sont passibles de saisie.

ARTICLE 34. La capture et la saisie sont admises alors même que les navires ou les marchandises sont tombés au pouvoir du belligérant à la suite d'une force majeure, par naufrage ou relâche forcée.

ARTICLE 35. Sont passibles de saisie les navires qui ne possèdent aucuns papiers de bord, ont caché ou détruit intentionnellement ceux qu'ils possédaient ou en présentent de faux.

ARTICLE 36. *Atténuations au principe de la capture*—Lorsqu'un navire public ou privé relevant d'une des puissances belligérantes se trouve, au début des hostilités, dans un port ennemi, il lui est permis de sortir librement, immédiatement ou après un délai suffisant, et de gagner directement après avoir été muni d'un laissez-passer, son port de destination ou tel autre port qui lui sera désigné.

Il en est de même du navire ayant quitté son dernier port de départ avant le commencement de la guerre et entrant dans un port ennemi sans connaître les hostilités.

ARTICLE 37. Le navire public ou privé qui, par suite de circonstances de force majeure, n'aurait pu quitter le port ennemi pendant le délai visé à l'article précédent, ne peut être confisqué.

Le belligérant peut seulement le saisir moyennant l'obligation de le restituer après la guerre sans indemnité, ou le réquisitionner moyennant indemnité.

ARTICLE 38. Les navires ennemis, publics ou privés, qui ont quitté leur dernier port de départ avant le commencement de la guerre et qui

sont rencontrés en mer ignorants des hostilités, ne peuvent être capturés. Ils sont seulement sujets à être saisis, moyennant l'obligation de les restituer après la guerre sans indemnité, ou à être réquisitionnés, ou même à être détruits, à charge d'indemnité et sous obligation de pourvoir à la sécurité des personnes ainsi qu'à la conservation des papiers de bord.

Néanmoins, au cas où ces navires seraient rencontrés en mer avant l'expiration d'un délai suffisant à accorder par le belligérant, la saisie ne peut être opérée. Les navires ainsi rencontrés sont libres de gagner leur port de destination ou tel autre port que leur serait désigné.

Après avoir touché à un port de leur pays ou à un port neutre, ces navires sont soumis au droit de capture.

ARTICLE 39. Les marchandises ennemies se trouvant à bord des navires saisis par application des articles 37 et 38 peuvent également être retenues. Elles seront restituées après la guerre sans indemnité, sauf à être réquisitionnées moyennant indemnité.

Il en est de même des marchandises ayant le caractère de contrebande de guerre qui se trouvent à bord des navires visés aux articles 36, 37, et 38, alors même que ces navires ne sont pas soumis à la saisie.

ARTICLE 40. Dans tous les cas visés aux articles 36, 37, et 38, les navires publics ou privés dont la construction indique qu'ils sont destinés à être transformés en bâtiments de guerre, peuvent être saisis ou réquisitionnés moyennant indemnité. Ces navires seront restitués après la guerre.

Les marchandises qui se trouvent à bord de ces navires seront traitées d'après les règles de l'article 39.

ARTICLE 41. *Exceptions aux principes des articles 31 et 33.—Bâtiments hospitaliers.*—Sont respectés et ne peuvent être saisis pendant la durée des hostilités les bâtiments-hôpitaux militaires, c'est-à-dire les bâtiments construits ou aménagés par les Etats spécialement et uniquement en vue de porter secours aux blessés, malades et naufragés, et dont les noms auront été communiqués, à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage, aux puissances belligérantes.

Les bâtiments-hôpitaux militaires seront distingués par une peinture extérieure blanche avec une bande horizontale verte d'un mètre et demi de largeur environ.

Les embarcations des bâtiments qui viennent d'être mentionnés, comme les petits bâtiments qui pourront être affectés au service hospitalier, se distingueront par une peinture analogue.

Tous les bâtiments hospitaliers se feront reconnaître en hissant, avec leur pavillon national, le pavillon blanc à croix rouge prévu par la Convention de Genève.

Les bâtiments et embarcations ci-dessus mentionnés, qui veulent s'assurer, la nuit, le respect auquel ils ont droit, ont, avec l'assentiment du belligérant qu'ils accompagnent, à prendre les mesures nécessaires pour que la peinture qui les caractérise soit suffisamment apparente.

Les signes distinctifs prévus au présent article ne pourront être employés que pour protéger ou désigner les bâtiments mentionnés.

Ces bâtiments ne peuvent être utilisés pour aucun but militaire.

Ils ne devront gêner en aucune manière les mouvements des combattants.

Pendant et après le combat, ils agiront à leurs risques et périls.

Les belligérants auront sur eux droit de contrôle et de visite; ils pourront refuser leur concours, leur enjoindre de s'éloigner, leur imposer une direction déterminée et mettre à bord un commissaire, même les détenir si la gravité des circonstances l'exigeait.

Autant que possible, les belligérants inscriront sur le journal du bord des bâtiments hospitaliers les ordres qu'ils leur donneront.

Les bâtiments hospitaliers qui, dans les termes du présent article, sont détenus par l'ennemi auront à rentrer le pavillon national du belligérant dont ils relèvent.

ARTICLE 42. Les bâtiments hospitaliers, équipés en totalité ou en partie aux frais de particuliers ou des sociétés de secours officiellement reconnues, sont également respectés et exempts de saisie, si la puissance belligérante dont ils dépendent leur a donné une commission officielle et en a notifié les noms à la puissance adverse à l'ouverture ou au cours des hostilités, en tout cas avant toute mise en usage.

Ces navires doivent être porteurs d'un document de l'autorité compétente déclarant qu'ils ont été soumis à son contrôle pendant leur armement et à leur départ final.

Les bâtiments dont il s'agit seront distingués par une peinture extérieure blanche avec une bande horizontale rouge d'un mètre et demi de largeur environ.

Ils sont soumis aux règles établies pour les bâtiments-hôpitaux militaires par l'article 41.

ARTICLE 43. Dans le cas d'un combat à bord d'un vaisseau de guerre, les infirmeries et leur matériel seront respectés et ménagés autant que faire se pourra. Tout en demeurant soumis aux lois de la guerre, ils ne pourront être détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et malades. Le commandant qui les a en son pouvoir a cependant la faculté d'en disposer, en cas de nécessité militaire importante, en assurant le sort des blessés et malades qui s'y trouvent.

ARTICLE 44. La protection due aux bâtiments hospitaliers et aux infirmeries des vaisseaux cesse si l'on en use pour commettre des actes nuisibles à l'ennemi. N'est pas considéré comme étant de nature à justifier le retrait de la protection, le fait que le personnel de ces bâtiments et de ces infirmeries est armé pour le maintien de l'ordre et pour la défense des blessés ou malades, ainsi que le fait de la présence à bord d'une installation radio-télégraphique.

ARTICLE 45. *Navires de cartel.*—Ne peuvent être saisis, pendant qu'ils remplissent leur mission, les navires dits de cartel, qui font office de parlementaires, même s'ils appartiennent à la marine militaire.

Est considéré comme navire de cartel, le navire autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec un pavillon blanc.

Le chef auquel un navire de cartel est expédié n'est pas obligé de le recevoir en toutes circonstances. Il peut prendre toutes les mesures

nécessaires afin d'empêcher le navire de cartel de profiter de sa mission pour se renseigner. Il a le droit, en cas d'abus, de retenir temporairement le navire de cartel.

Le navire de cartel perd ses droits d'inviolabilité, s'il est prouvé, d'une manière positive et irrécusable, que le commandant a profité de la position privilégiée de ce navire pour provoquer ou commettre un acte de trahison.

ARTICLE 46. *Navires chargés de missions.*—Sont exempts de saisie les navires chargés de missions religieuses, scientifiques ou philanthropiques.

ARTICLE 47. *Bateaux affectés à la pêche côtière et à la petite navigation locale.*—Les bateaux exclusivement affectés à la pêche côtière, ou à des services de petite navigation locale, y compris ceux exclusivement affectés au pilotage ou au service des phares, comme aussi les navires destinés à naviguer principalement sur les fleuves, canaux et lacs, sont exempts de saisie, ainsi que leurs engins, agrès, apparaux et charge-ments.

Il est interdit de profiter du caractère inoffensif des dits bateaux pour les employer dans un but militaire en leur conservant leur apparence pacifique.

ARTICLE 48. *Navires munis d'un sauf-conduit ou d'une licence.*—Sont exempts de capture les navires ennemis pourvus d'un sauf-conduit ou d'une licence.

ARTICLE 49. *Cessation des immunités.*—Les exceptions visées dans les articles 41, 42, 45, 46, 47 et 48 cessent d'être applicables si les navires qui en font l'objet participent d'une façon quelconque aux hostilités ou commettent d'autres actes qui sont interdits aux neutres comme assistance hostile.

Il en est de même si, sommés de s'arrêter pour être soumis à la visite, ils essayent de s'y soustraire par la force ou par la fuite.

ARTICLE 50. *Droits du belligérant dans la zone de ses opérations.*—Alors qu'il n'aurait pas le droit de les saisir ou de les capturer, un belligérant peut, même en haute mer, défendre aux navires de l'ennemi d'entrer dans la zone correspondant à la sphère d'action actuelle de ses opérations.

Il peut aussi leur interdire dans cette zone certains actes susceptibles de nuire à son action, notamment certains actes de communication, comme par exemple la télégraphie sans fil.

La simple infraction à ces interdictions entraînera le refoulement, même par la force, du navire hors de la zone interdite et le séquestre des appareils. Le navire, s'il est établi qu'il a communiqué avec l'ennemi pour lui fournir des renseignements sur la conduite des hostilités, pourra être considéré comme s'étant mis à son service et sera par suite passible de capture ainsi que ses appareils.

ARTICLE 51. *Du caractère ennemi.*—Le caractère ennemi ou neutre d'un navire est déterminé par le pavillon qu'il a le droit de porter.

Le caractère ou neutre des marchandises trouvées à bord d'un navire ennemi est déterminé par le caractère ennemi ou neutre de leur propriétaire.

Chaque Etat doit déclarer, au plus tard dès le début des hostilités, si le caractère ennemi ou neutre du propriétaire des marchandises est déterminé par le domicile ou par la nationalité de ce propriétaire.

Le caractère ennemi de la marchandise trouvée à bord d'un navire ennemi subsiste jusqu'à l'arrivée à destination, nonobstant un transfert intervenu pendant le cours de l'expédition, après l'ouverture des hostilités.

Toutefois, si, antérieurement à la capture, un précédent propriétaire neutre exerce, en cas de faillite du propriétaire ennemi actuel, un droit de revendication légale sur la marchandise, celle-ci reprend le caractère neutre.

ARTICLE 52. *Du transfert du pavillon.*—Le transfert sous pavillon neutre d'un navire ennemi, effectué avant l'ouverture des hostilités, est valable, à moins qu'il soit établi que ce transfert a été effectué en vue d'éluder les conséquences qu'entraîne le caractère de navire ennemi. Il y a néanmoins présomption de nullité si l'acte de transfert ne se trouve pas à bord, alors que le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités; la preuve contraire est admise.

Il y a présomption absolue de validité d'un transfert effectué plus de trente jours avant l'ouverture des hostilités, s'il est absolu, complet, conforme à la législation des pays intéressés, et s'il a cet effet que le contrôle du navire et le bénéfice de son emploi ne restent pas entre les mêmes mains qu'avant le transfert. Toutefois, si le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités, et si l'acte de transfert ne se trouve pas à bord, la saisie du navire ne pourra donner lieu à des dommages et intérêts.

Le transfert sous pavillon neutre d'un navire ennemi, effectué après l'ouverture des hostilités, est nul, à moins qu'il soit établi que ce transfert n'a pas été effectué en vue d'éluder les conséquences qu'entraîne le caractère de navire ennemi.

Toutefois, il y a présomption absolue de nullité : 1° si le transfert a été effectué pendant que le navire est en voyage ou dans un port bloqué; 2° s'il y a faculté de réméré ou de retour; 3° si les conditions auxquelles est soumis le droit de pavillon d'après la législation du pavillon arboré, n'ont pas été observées.

ARTICLE 53. B. *Correspondance postale.*—La correspondance postale, quelque soit son caractère officiel ou privé, trouvée en mer sur un bâtiment ennemi, est inviolable, à moins qu'elle ne soit en destination ou en provenance d'un port bloqué.

L'inviolabilité de la correspondance postale ne soustrait pas les paquebots-poste aux lois et coutumes de la guerre sur mer concernant les navires en général. Toutefois la visite n'en doit être effectuée qu'en cas de nécessité avec tous les ménagements et toute la célérité possibles.

S'il y a saisie du navire sur lequel la poste est embarquée, la correspondance est expédiée avec le moins de retard possible par le capteur.

ARTICLE 54. *C. Câbles sous-marins.*—Les Etats belligérants ne sont autorisés à saisir et à détruire, dans les conditions déterminées ci-dessous, que les câbles sous-marins reliant leurs territoires ou deux points de ces territoires, et les câbles reliant le territoire d'un des pays en guerre à un territoire neutre.

Le câble les territoires des deux belligérants ou deux parties du territoire d'un des belligérants peut être saisi ou détruit partout, excepté dans les eaux d'un Etat neutre.

Le câble reliant un territoire neutre au territoire d'un des belligérants ne peut, en aucun cas, être saisi ou détruit dans les eaux dépendant d'un territoire neutre. En haute mer, ce câble ne peut être saisi ou détruit que s'il y a blocus effectif et dans les limites de la ligne de blocus, sauf rétablissement du câble dans le plus bref délai possible. Ce câble peut toujours être saisi ou détruit sur le territoire et dans la mer territoriale dépendant d'un territoire ennemi jusqu'à une distance de trois milles marins de la laisse de basse marée. La saisie ou la destruction ne peut jamais avoir lieu que dans le cas de nécessité absolue.

En ce qui concerne l'application des règles précédentes, il n'y a pas de différence à établir entre les câbles, selon qu'ils sont des câbles d'Etat ou qu'ils appartiennent à des particuliers; il n'y a pas non plus à tenir compte de la nationalité de leurs propriétaires.

Les câbles sous-marins reliant un territoire belligérant à un territoire neutre, qui auront été saisis ou détruits, devront être restitués et les indemnités seront réglées à la paix.

#### SECTION V.—DES DROITS ET DEVOIRS DU BELLIGÉRANT EN CE QUI CONCERNE LES PERSONNES.

ARTICLE 55. *A. Personnel des navires—Bâtiments de guerre.*—En cas de prise par l'ennemi d'un bâtiment de guerre, les combattants et les non-combattants faisant partie de la force armée des belligérants ont droit au traitement des prisonniers de guerre.

ARTICLE 56. *Navires publics ou privés.*—Lorsqu'un navire ennemi public ou privé est saisi par un belligérant, les hommes de son équipage, nationaux d'un Etat neutre, ne sont pas faits prisonniers de guerre. Il en est de même du capitaine et des officiers, également nationaux d'un Etat neutre, s'ils promettent formellement par écrit de ne prendre, pendant la durée des hostilités, aucun service ayant rapport avec les opérations de la guerre. Le capitaine, les officiers et les membres de l'équipage, nationaux de l'Etat ennemi, ne sont pas faits prisonniers de guerre, à condition qu'ils s'engagent, sous la foi d'une promesse formelle écrite, à ne prendre, pendant la durée des hostilités, aucun service ayant rapport avec les opérations de la guerre.

ARTICLE 57. Les noms des individus laissés libres sous la condition de la promesse prévue par l'article précédent sont notifiés par le belligérant capteur à l'autre belligérant. Il est interdit à ce dernier d'employer sciemment les dits individus.



ARTICLE 58. Toute personne faisant partie de l'équipage d'un navire public ou privé ennemi est, sauf preuve contraire, présumée de nationalité ennemie.

ARTICLE 59. Ne peuvent être retenus comme tels les membres du personnel d'un navire ennemi qui, à raison de son caractère particulier, est lui-même exempt de saisie.

ARTICLE 60. *Sous la condition de la promesse prévue par l'article précédent.*—Lorsqu'un navire public ou privé a directement ou indirectement pris part aux hostilités, l'ennemi peut retenir comme prisonniers de guerre tous les membres du personnel du navire, sans préjudice des pénalités qui peuvent être encourues d'autre part.

ARTICLE 61. Les membres du personnel d'un navire public ou d'un navire privé, qui se rendent personnellement coupables d'un acte hostile envers l'ennemi, peuvent être retenus par lui comme prisonniers de guerre, sans préjudice des pénalités qui peuvent être encourues d'autre part.

ARTICLE 62. *B. Passagers.*—Les individus qui suivent une force navale sans en faire partie, tels que les fournisseurs, correspondants de journaux, etc., lorsqu'ils tombent au pouvoir de l'ennemi, et lorsque celui-ci juge utile de les retenir, ne peuvent être détenus qu'aussi longtemps que les nécessités militaires l'exigent. Ils ont droit au traitement des prisonniers de guerre.

ARTICLE 63. Les passagers qui, sans faire partie de l'équipage, se trouvent à bord d'un navire ennemi, ne peuvent être retenus comme prisonniers de guerre par l'ennemi, à moins qu'ils ne se soient rendus coupables d'un acte hostile.

Tout passager incorporé dans la force armée de l'ennemi peut être fait prisonnier de guerre, même si le navire n'est pas susceptible de saisie.

ARTICLE 64. *C. Personnel religieux, médical et hospitalier.*—Le personnel religieux, médical et hospitalier de tout bâtiment pris ou saisi est inviolable et ne peut être fait prisonnier de guerre. Il emporte, en quittant le navire, les objets et les instruments de chirurgie qui sont sa propriété particulière.

Ce personnel continuera à remplir ses fonctions tant que cela sera nécessaire et il pourra ensuite se retirer, lorsque le commandant en chef le jugera possible.

Les belligérants doivent assurer à ce personnel tombé entre leurs mains les mêmes allocations et la même solde qu'au personnel des mêmes grades de leur propre marine.

Jouit de la protection dont bénéficie le personnel sanitaire, le commissaire mis par le belligérant à bord du bâtiment hospitalier de son adversaire, conformément à l'alinéa 10 de l'article 41.

Le personnel religieux, médical et hospitalier perd ses droits à l'inviolabilité, s'il s'immisce dans les hostilités, si, par exemple, il fait usage de ses armes autrement que comme moyen de défense.

ARTICLE 65. *D. Parlementaires.*—Le personnel des navires de cartel est inviolable.

Il perd ses droits à l'inviolabilité s'il est prouvé d'une manière positive et irrécusable qu'il a profité de sa position privilégiée pour provoquer ou commettre un acte de trahison.

ARTICLE 66. E. *Espions*.—L'espion, même pris sur le fait, ne peut être puni sans jugement préalable.

ARTICLE 67. On ne doit considérer comme espion que l'individu qui, agissant clandestinement ou sous de faux prétextes, et dissimulant ainsi ses opérations, recueille ou cherche à recueillir des informations dans la zone d'opérations d'un belligérant avec l'intention de les communiquer à la partie adverse.

Ne peuvent, dès lors, être réputés espions et sont soumis au traitement des prisonniers de guerre, s'ils sont capturés, les militaires non déguisés qui ont pénétré dans la zone d'opérations de la flotte ennemie à l'effet de recueillir des informations. De même, ne sont pas regardés comme espions les militaires et les non militaires accomplissant ouvertement leur mission, qui sont chargés de transmettre des dépêches, ou qui se livrent à la transmission et à la réception de dépêches par télégraphie sans fil. A cette catégorie appartiennent également les individus envoyés en aéronefs ou en hydroaéroplanes pour faire un service d'exploration dans la zone d'opérations de la flotte ennemie ou pour entretenir des communications.

ARTICLE 68. L'espion qui réussit à sortir de la zone correspondant à la sphère d'action actuelle des opérations de l'ennemi, ou qui a rejoint la force armée à laquelle il appartient, n'encourt, s'il tombe plus tard au pouvoir de l'ennemi, aucune responsabilité pour ses actes antérieurs.

ARTICLE 69. F. *Réquisition des nationaux de l'Etat ennemi: Guides, pilotes et otages*. Le belligérant n'a pas le droit de forcer les individus qui tombent en son pouvoir, et d'une manière générale les nationaux de la partie adverse, à prendre part aux opérations de guerre dirigées contre leur pays, même dans le cas où ils auraient été à son service avant le commencement de la guerre, ainsi que de les contraindre à donner des renseignements sur leur propre Etat, ses forces, sa position militaire ou ses moyens de défense.

Il ne pourra les obliger à lui servir de guides ou de pilotes.

Il pourra toutefois punir ceux qui sciemment et volontairement se seront offerts pour l'induire en erreur.

Il n'est pas permis de forcer les nationaux d'un belligérant à prêter serment à la puissance ennemie.

Il est interdit de prendre des otages.

ARTICLE 70. G. *Prisonniers de guerre*.—Les prisonniers de guerre sont au pouvoir du gouvernement ennemi, mais non des individus ou des corps qui les ont capturés.

Ils doivent être traités avec humanité.

Tout ce qui leur appartient personnellement reste leur propriété, excepté les armes, les chevaux, les papiers militaires, et en général tous objets spécialement adaptés à un but militaire,

ARTICLE 71. Les prisonniers de guerre ne peuvent être assujettis à l'internement sur un navire qu'en cas de nécessité et temporairement.

ARTICLE 72. Le gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est chargé de leur entretien.

ARTICLE 73. Tous les prisonniers de guerre seront, aussi longtemps qu'ils se trouvent à bord d'un navire, soumis aux lois, règlements et ordres en vigueur dans la flotte de l'Etat au pouvoir duquel ils se trouvent.

ARTICLE 74. Les prisonniers évadés qui seraient repris avant d'avoir pu réussir à sortir de la sphère d'action actuelle de l'ennemi, ou avant d'avoir pu rejoindre la force armée à laquelle ils appartiennent, sont passibles de peines disciplinaires.

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure.

ARTICLE 75. Chaque prisonnier de guerre est tenu de déclarer, s'il est interrogé à ce sujet, ses véritables nom et grade, et, dans le cas où il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie.

ARTICLE 76. Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obligés, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à-vis de leur propre gouvernement que vis-à-vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractés.

Dans le même cas, leur propre gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire à la parole donnée.

ARTICLE 77. Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole; de même le gouvernement ennemi n'est pas obligé d'accéder à la demande du prisonnier réclamant sa mise en liberté sur parole.

ARTICLE 78. Tout prisonnier de guerre, libéré sur parole et repris portant les armes contre le gouvernement envers lequel il s'était engagé d'honneur, ou contre les alliés de celui-ci, perd le droit au traitement des prisonniers de guerre et peut être traduit devant les tribunaux, à moins que, postérieurement à sa libération, il n'ait été compris dans un cartel d'échange sans conditions.

ARTICLE 79. Les prisonniers de la guerre maritime débarqués sur le territoire continental sont soumis aux règles établies pour les prisonniers de la guerre terrestre.

Les mêmes règles doivent être appliquées, dans la mesure du possible, aux prisonniers de guerre internés sur un navire.

Les règles qui précèdent, dans la mesure où il est possible de les appliquer, doivent être suivies vis à vis des prisonniers de guerre dès le moment de leur capture, alors qu'ils sont sur le navire qui les conduit au lieu de leur internement.

ARTICLE 80. Après la conclusion de la paix, le rapatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible.

ARTICLE 81. *H. Blessés, malades, naufragés et morts.*—Les bâtiments employés au service hospitalier porteront secours et assistance aux blessés, malades et naufragés des belligérants sans distinction de nationalité.

ARTICLE 82. Dans le cas de prise ou de saisie d'un navire ennemi ou d'un bâtiment hospitalier qui a manqué à ses obligations, les marins et les militaires embarqués et les autres personnes officiellement attachées aux marines ou aux armées, blessés, malades ou naufragés, à quelque nation qu'ils appartiennent, seront respectés et soignés par les capteurs.

ARTICLE 83. Tout bâtiment de guerre d'une partie belligérante peut réclamer la remise des blessés, malades ou naufragés, qui sont à bord de bâtiments-hôpitaux militaires, de bâtiments hospitaliers de sociétés de secours ou de particuliers, de navires de commerce, yachts et embarcations quelle que soit la nationalité de ces bâtiments.

ARTICLE 84. Sont prisonniers de guerre les naufragés, blessés ou malades d'un belligérant qui tombent au pouvoir de l'autre. Il appartient à celui-ci de décider suivant les circonstances, s'il convient de les garder, de les diriger sur un port de sa nation, sur un port neutre ou même sur un port de son adversaire. Dans ce dernier cas, les prisonniers ainsi rendus à leur pays ne pourront servir pendant la durée de la guerre.

ARTICLE 85. Après chaque combat, les deux parties belligérantes, en tant que les intérêts militaires le comportent, prendront des mesures pour rechercher les naufragés, les blessés et les malades, et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

Elles veilleront à ce que l'inhumation, l'immersion ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

ARTICLE 86. Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leur pays, de leur marine ou de leur armée, les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront, pour les faire transmettre aux intéressés par les autorités de leur pays, tous les objets d'un usage personnel, valeurs, lettres, etc., qui seront trouvés dans les navires pris ou saisis, ou qui seront délaissés par les blessés ou malades décédés dans les hôpitaux.

ARTICLE 87. En cas d'opérations de guerre entre les forces de terre et de mer des belligérants, les dispositions du présent règlement sur l'assistance hospitalière ne seront applicables qu'aux forces embarquées.

#### SECTION VI.—DES DROITS ET DES DEVOIRS DU BELLIGÉRANT EN TERRITOIRE OCCUPÉ.

ARTICLE 88. *Occupation: étendue et effets.*—L'occupation d'un territoire maritime, c'est-à-dire des golfes, baies, rades, ports et eaux territoriales, n'existe que dans les cas où il y a en même temps occupation du territoire continental, soit par une force navale, soit par une force militaire. L'occupation est, en ce cas, soumise aux lois et usages de la guerre terrestre.

## SECTION VII.—DES CONVENTIONS ENTRE BELLIGÉRANTS.

ARTICLE 89. *Règles générales.*—Le commandant de toute force navale belligérante peut conclure des conventions de nature purement militaire concernant les forces sous ses ordres.

Il ne peut, sans autorisation de son gouvernement, conclure aucune convention ayant un caractère politique, telle qu'un armistice général.

ARTICLE 90. Toutes conventions entre belligérants doivent tenir compte des règles de l'honneur militaire et, une fois fixées, doivent être scrupuleusement observées par les deux parties.

ARTICLE 91. *Capitulation.*—Après avoir conclu une capitulation, le commandant ne peut endommager ni détruire les navires, objets ou approvisionnements en sa possession qu'il doit livrer, à moins que le droit d'agir ainsi ne lui ait été expressément réservé dans la capitulation.

ARTICLE 92. *Armistice.*—L'armistice suspend les opérations de la guerre.

Les blocus établis au moment de l'armistice ne sont pas levés, à moins d'une stipulation spéciale dans la convention.

Le droit de visite continue à pouvoir être exercé. Le droit de capture cesse hormis les cas où ce droit existerait à l'égard des navires neutres.

ARTICLE 93. L'armistice peut être général ou partiel. Le premier suspend partout les opérations de guerre des Etats belligérants; le second seulement entre certaines fractions des forces belligérantes et dans un rayon déterminé.

ARTICLE 94. La convention qui stipule un armistice doit indiquer avec précision le moment où il commence et celui où il doit finir.

L'armistice doit être notifié officiellement et en temps utile par chaque belligérant aux autorités compétentes ainsi qu'aux forces intéressées.

ARTICLE 95. Les hostilités sont suspendues au terme fixé par la convention, ou, si un terme n'a pas été établi, immédiatement après la notification de l'armistice.

Si la durée de l'armistice n'a pas été déterminée, les parties belligérantes peuvent reprendre en tout temps les opérations, pourvu toutefois que l'ennemi soit averti en temps utile.

ARTICLE 96. Les clauses de l'armistice naval fixeront, au cas où elles admettraient l'accès des bâtiments de guerre des belligérants à certains points du littoral ennemi, les conditions de cet accès et les rapports de ces bâtiments soit avec les autorités locales, soit avec les populations.

ARTICLE 97. Toute violation grave de l'armistice par l'une des parties donne à l'autre le droit de le dénoncer et même, en cas d'urgence, de reprendre immédiatement les hostilités.

ARTICLE 98. La violation des clauses de l'armistice par des particuliers isolés, agissant de leur propre initiative, donne droit seulement à réclamer la punition des coupables et, s'il y a lieu, une indemnité pour les pertes éprouvées.

ARTICLE 99. *Suspension d'armes.*—La suspension d'armes doit, comme l'armistice, fixer avec précision le point de départ de l'arrêt des hostilités et le moment où doit cesser son effet.

S'il n'y a pas de délai fixé pour la reprise des hostilités, le belligérant qui se propose de continuer la lutte doit en prévenir l'ennemi en temps utile.

La rupture d'une suspension d'armes par l'un des belligérants ou par des particuliers isolés entraîne les conséquences visées aux articles 97 et 98.

#### SECTION VIII.—DES FORMALITÉS DE LA SAISIE ET DU JUGEMENT DES PRISES.

ARTICLE 100. *Formalités de la saisie.*—Lorsque, après la visite qui en aura été faite, un navire est reconnu susceptible de capture, l'officier qui en opère la saisie doit:

1° mettre sous scellés, après les avoir inventoriés, tous les papiers de bord du navire;

2° dresser un procès-verbal de la saisie, ainsi qu'un inventaire sommaire du bâtiment constatant son état;

3° constater l'état de la cargaison dont il sera dressé un inventaire, puis faire fermer les écoutilles de la cale, les coffres et les soutes et y apposer les scellés autant que le permettent les circonstances;

4° dresser la liste des personnes trouvées à bord;

5° mettre à bord du navire saisi un équipage suffisant pour s'assurer du navire et y maintenir l'ordre et le conduire dans tel port qu'il appartiendra.

S'il le juge à propos, le capitaine peut, au lieu de détacher un équipage à bord du navire, se borner à l'escorter.

ARTICLE 101. En dehors des personnes susceptibles d'être considérées comme prisonniers de guerre ou d'être punies, le belligérant ne peut retenir, sur le navire saisi, que pendant un délai raisonnable, celles qu'il est nécessaire d'entendre comme témoins pour la constatation des faits: à moins d'empêchement absolu il doit les remettre en liberté après que procès-verbal de leurs dépositions a été dressé.

Si des circonstances spéciales le commandent, le capitaine, les officiers et une partie de l'équipage du navire saisi peuvent être pris à bord du capteur.

Le capteur pourvoira à l'entretien des personnes retenues et leur donnera, en tout cas, ainsi qu'aux personnes de l'équipage, lors de leur mise en liberté, les moyens provisoirement nécessaires pour leur entretien ultérieur.

ARTICLE 102. Le navire saisi doit être conduit dans un port de l'Etat capteur ou dans celui d'une puissance belligérante alliée, aussi proche que possible, susceptible d'offrir un abri sûr et ayant des communications faciles avec le tribunal des prises chargé de statuer sur la capture.

Pendant le voyage, la prise naviguera avec le pavillon et la flamme, insigne des navires militaires de l'Etat.

ARTICLE 103. Le navire saisi et la cargaison seront, autant que possible, maintenus intacts durant leur voyage au port.

Si la cargaison comprend des choses susceptibles de se détériorer facilement, le capteur, autant que possible d'accord avec le capitaine du navire saisi et en sa présence, prendra les mesures les plus convenables pour la conservation de ces choses.

ARTICLE 104. *Destruction des navires et des marchandises confiscales.*— Il n'est permis aux belligérants de détruire les navires ennemis saisis qu'en tant qu'ils sont sujets à confiscation et en présence d'une nécessité exceptionnelle, c'est-à-dire lorsque l'exigent la sécurité du navire capteur ou le succès des opérations de guerre dans lesquelles celui-ci est actuellement engagé.

Avant la destruction, les personnes qui se trouvent à bord devront être mises en sûreté, et tous les papiers de bord et autres pièces que les intéressés estimeront utiles pour le jugement sur la validité de la capture, devront être transbordés sur le navire capteur. Il en sera de même, dans la mesure du possible, pour les marchandises.

Il sera dressé procès-verbal de la destruction du navire capturé et des motifs qui l'ont amenée.

ARTICLE 105. Le capteur a la faculté d'exiger la remise ou de procéder à la destruction des marchandises confiscales trouvées à bord d'un navire qui lui-même n'est pas sujet à confiscation, lorsque les circonstances sont telles que, d'après l'article précédent, elles justifieraient la destruction d'un navire passible de confiscation. Il mentionne les objets livrés ou détruits sur le livre de bord du navire arrêté et se fait remettre par le capitaine copie certifiée conforme de tous papiers utiles. Lorsque la remise ou la destruction a été effectuée et que les formalités ont été remplies, le capitaine doit être autorisé à continuer sa route.

ARTICLE 106. *Emploi des navires saisis.*—Si le navire saisi ou sa cargaison est nécessaire au capteur pour un usage public immédiat, il peut les employer à cet usage. Dans ce cas il sera fait du navire et de la cargaison, par des personnes impartiales, une estimation et un inventaire soigneux qui, joints au dossier de la saisie, seront transmis au tribunal des prises.

ARTICLE 107. *Perte des prises par fortune de mer.*—Si une prise est perdue par fortune de mer, on doit constater le fait avec soin. Aucune indemnité n'est due, dans ce cas, ni pour le navire, ni pour le chargement, pourvu que, si la prise est annulée ultérieurement, le capteur puisse prouver que la perte aurait eu lieu même en l'absence du capture.

ARTICLE 108. *Rescousse.*—Lorsqu'un navire pris, puis repris, vient à être enlevé au recapteur, le dernier capteur a seul des droits sur lui.

ARTICLE 109. *Jugement des prises.*—Le navire saisi et son chargement, une fois entrés dans un port de l'Etat capteur ou dans celui d'une puissance alliée, sont remis à l'autorité compétente, avec tous les documents nécessaires.

ARTICLE 110. La légalité et la régularité de la capture des navires ennemis et de la saisie des marchandises doivent être établies devant la juridiction des prises.

ARTICLE 111. Toute reprise doit également être jugée par la juridiction des prises.

ARTICLE 112. Un Etat belligérant n'acquerra la propriété du navire ou des marchandises qu'il a saisis durant la guerre qu'au moment où, par une décision devenue définitive, la juridiction des prises aura prononcé à son profit la confiscation de ce navire ou de ces marchandises.

ARTICLE 113. Si la saisie du navire ou des marchandises n'est pas validée par la juridiction des prises, ou si, sans qu'il y ait eu de mise en jugement, la saisie n'est pas maintenue, les intéressés ont droit à des dommages et intérêts, à moins qu'il y ait eu des motifs suffisants de saisir le navire ou les marchandises.

ARTICLE 114. Dans le cas de destruction d'un navire, le capteur sera tenu d'indemniser les intéressés, s'il n'est pas justifié par lui de la nécessité exceptionnelle de la destruction, ou si, la destruction ayant été justifiée, la capture est ensuite déclarée nulle.

La même règle est applicable dans l'hypothèse prévue à l'article 105.

Si des marchandises qui n'étaient pas susceptibles de confiscation ont été détruites, le propriétaire de ces marchandises a droit à une indemnité.

Au cas où le capteur a fait emploi du navire ou de la cargaison après la saisie, il devra, si celle-ci est reconnue illégitime, payer aux intéressés une équitable indemnité, d'après les documents dressés au moment de l'emploi.

ARTICLE 115. A la différence des navires publics non militaires et des navires privés ennemis, les bâtiments de la marine militaire d'un belligérant pris par son l'adversaire, deviennent, ainsi que leur matériel, la propriété de celui-ci, dès qu'ils sont tombés en sa possession, sans que doive intervenir une décision de la juridiction des prises.

#### SECTION IX.—DE LA FIN DES HOSTILITÉS.

ARTICLE 116. *Paix*.—Les actes d'hostilité doivent cesser par la signature de la paix.

L'avis de la fin de la guerre doit être notifié dans le plus bref délai par chaque gouvernement au commandant de ses forces navales.

Lorsque des actes hostiles ont été accomplis après la signature de la paix, on doit, autant que possible, remettre les choses en l'état.

Lorsqu'ils ont été accomplis après connaissance de l'avis officiel du traité de paix, ils donneront lieu à une indemnité et à la punition des coupables.

#### ARTICLE ADDITIONNEL.

Conformément à l'article 3 de la Convention de La Haye du 18 octobre 1907, concernant les lois et coutumes de la guerre sur terre, la partie belligérante qui violerait les dispositions du présent règlement sera tenue à une indemnité, s'il y a lieu; elle sera responsable de tous actes commis par les personnes faisant partie de sa force armée navale.





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